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The African System on Human and Peoples' Rights, Quasi-Constructivism, and the Possibility of Peacebuilding *within* African States

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ABSTRACT *This article examines the influence that IHIs (such as the African System on Human and Peoples' Rights) can exert within states, with the facilitative work of local popular forces, and relates that to the possibility of valuable IHI contributions to peacebuilding within deeply fragmented African states. Of all the existing approaches to the study of IHIs, constructivism comes the closest to accounting for the highly significant incidences of IHI-fostered (and popular forces-facilitated) 'correspondence' that occurs outside the 'compliance radar'. In this sense the article is a contribution to the growing constructivist human rights and institutional literature sets. In particular the article explores the brighter possibilities for peacebuilding thinking and practice that are revealed by a broader and less conventional analysis of the African system's continuing engagement with elements of the local popular forces that operate within Nigeria.*

Do international human rights institutions (IHIs) matter to local popular forces that wage domestic social justice and legitimate governance struggles around the world? Can IHIs contribute meaningfully to such struggles for social justice and legitimate governance within states? Do particular IHIs matter particularly in particular places? If so, why, when, and how do such IHIs matter? Aside from generally vain attempts at *commanding* obedience and very limited successes at *cajoling* compliance, are there other significant ways in which IHIs can matter to such local struggles? Apart from acting like 'imperial' institutions that enforce or cajole state compliance, how else – in what other non-imperial ways – can and do IHIs contribute meaningfully to such local struggles? Aside from doing something *for* the local popular forces that wage such struggles, what meaningful things can such local popular forces do *with* IHIs within their own countries? How can these

local popular forces (as agents) deploy and harness the norms and creative spaces made available to them, in part at least, through the efforts of relevant IHIs? These are the broader questions that frame the more specific concerns that are dealt with in this article. On a broad level, the article is an attempt to relate insights derived from my more general work on the re-orientation of the conventional optics through which the influence that IHIs (such as the African System on Human and Peoples' Rights¹) can with the facilitative work of local popular forces exert *within* states, is observed, to the question of the possibility of valuable IHI contributions to peacebuilding within deeply fragmented African states. More specifically, the article attempts at a minimum to expose the brighter possibilities for peacebuilding thinking and practice that are revealed by a broader and less conventional analysis of the African system's continuing engagement with elements of the local popular forces that operate within Nigeria.

Broadly speaking, two sets of arguments are advanced in this article. The first set of arguments is that: (1) much of the evidence gathered as part of my broader research project tends to show that the African system has exerted significant, though modest,

'constructivist' influence within Nigeria's domestic governance institutions and on its civil society (influence of the kind that is explained, at least partly, by the concept of 'correspondence'²); (2) the process of '*trans-judicial communication*'³, through which the exertion of such significant influence by the African system was made possible, was facilitated in key ways by the networks of popular forces, including human rights NGOs, that operate within Nigeria; (3) if this is so, then the demonstrated capacity of the African system to make a significant contribution to the enhancement of a culture of constraint *within* this particular state - to contribute significantly to the progressive

transformation in the self-understandings, senses of appropriateness, and conceptions of self-interest held by key actors and institutions within Nigeria – ought to be more vigorously harnessed within and without that country in order to help address some of the structural problems that contribute to the generation of conflicts, and thus pose serious peacebuilding problems, in many such states. The obvious implication is that peacebuilding thinking and action can be deepened and strengthened when IHIs and the virtual alliances that they often form with local popular forces (and other agents) are taken seriously.

The second such argument is implied. It is what I style the ‘ACHPR phenomenon’ : the demonstrable capacity of the African system to exert significant, *albeit modest*, influence within Nigeria, with important implications for the orientation and efficacy of the very analytical optics through which many dominant ‘schools’ ⁴ of institutional thought have sought to assess and understand the possible domestic effects of IHIs.

However, as a prelude to the detailed articulation of these two broad arguments, a trans-disciplinary analysis will be undertaken of the various conventional ways in which international institutions in general, IHIs, and the African system itself, have been imagined in the relevant bodies of literature. Here, our method of analysis will be to examine closely the approach of each of the various ‘schools’ of international institutional theory to the study and assessment of IHIs.

My own assessment of these ‘schools’ and their approaches indicates that most of them have tended to subscribe to a set of conventional conceptions and accounts regarding the character and effects of IHIs in general, and the African system in particular. These conventional conceptions have tended to be overly focused on the capacity of such IHIs to *directly* coerce or cajole the *compliance* of state actors – an optic that is at its

weakest ‘relentlessly and bluntly Austinian’ in nature,⁵ and which is at its best moment grounded in a vision of the ideal IHI as the generator of the kind of adherence that Thomas Franck has, in another context, referred to as ‘voluntary compliance-pull’.⁶ In either case, state ‘compliance’ – making states ‘behave’ in some direct way – has been the crucial objective, the consuming concern.⁷ It is as a result of their compliancecentrism that most conventional approaches to the study of IHIs have almost always missed, or failed to adequately account for, the many other valuable and varied ways in which IHIs can and do foster modest yet significant levels of ‘correspondence’ between their norms/goals/decisions (on the one hand) and the thinking/action of key actors and institutions within some states. Put differently, it is as a result of their compliancecentric orientation that these ‘schools’ have generally failed to account for and theorise the modest but no less significant levels of ‘constructivist’ influence that IHIs have often fostered within the domestic governance institutions and civil societies of state actors – what I have otherwise styled ‘correspondence’. Consequently, as will be shown, most of these conventional approaches have also failed to account for, or explain adequately, the demonstrable capacity of the African system (seen as a weak IHI) to exert significant influence within Nigeria (a country that was, during the relevant period, viewed as a dictatorial state), while utilising the mediating activism of local popular forces – *what I have styled the ‘ACHPR phenomenon’*. It is urged that of all the existing approaches to the study of IHIs, constructivism, especially that strain of constructivism that I refer to as quasi-constructivism, comes the closest to accounting for the highly significant incidences of IHI-fostered (and popular forces-facilitated) ‘correspondence’ that occurs outside the ‘compliance radar’. It is also this approach that best explains the

‘ACHPR phenomenon’ . In this sense the article is a contribution to the growing constructivist human rights and institutional literature sets.

To develop these arguments, the organisation of the article is as follows. In the next section I examine, somewhat briefly, the conventional conceptions of the nature and effect of IHIs, and the blind spots that these conventional approaches tend to share. In the following section, I examine the question of the conventional conceptions of the African system, and the blind spots that they tend to exhibit. Next I attempt to demonstrate the proposition that the African system has exerted modest yet very significant influence within Nigeria, and buttress my arguments with a few examples from other African jurisdictions. Then I make a case for the centring of the generation of correspondence (and the de-centring of measurement of compliance) as the *primary basis* for evaluating the domestic effects that IHIs have had. I also explain in some detail the basis for the inability of most conventional approaches to the study of IHIs either to account for and theorise the generation of correspondence, or to explain adequately the occurrence of the ACHPR phenomenon. I also note that this failure has important implications for the holism and sufficiency of these analytic optics. In the next section I discuss the relationships among three phenomena: the capacity of the African system to exert modest but significant kinds of influence within Nigeria; the structural afflictions of the contemporary African state; and the question of peacebuilding within such deeply fragmented states. The main point that is made in this section is that if the African system has had a significant impact within a relatively powerful African state, during a period in which that state was widely regarded as ruled by dictatorial regimes, then it seems reasonable to suggest that the African system’s capacity to affect domestic politics within this state could, in some cases, be harnessed, improved and pressed into

the service of those peacebuilders who are minded to address effectively the structural afflictions of many African states. For after all, should not a good chunk of the peacebuilding effort in Africa be about removing or ameliorating the root causes of violence and offering credible alternatives to armed conflicts as a means of seeking political power and relevance?⁸ This reading of the concept of peacebuilding is in keeping with the work of Johan Galtung who has been credited with introducing that term into the contemporary social science lexicon.⁹ In the concluding section I offer some suggestions for the kind of concrete reforms that must occur if Africans are to reap the peace dividends that may accrue from effective peacebuilding on that continent. I also reflect on the implications of these conclusions for a future research agenda. At the outset, it is important to note that as Samuel Barnes has recently stated, modesty is always in order in social science scholarship.¹⁰ As such, I am in complete agreement with him that in this area of scholarship:

Little is known with certainty; some evident results have limited applicability; and often there is no compelling evidence as to what works and what does not.¹¹

As such, the claims that I make in this article are, while significant in my view, necessarily modest in nature. I do not purport to settle any of the pertinent debates, only to open up possibilities that might add to and enhance pre-existing thinking and approaches to the study of IHIs. In this sense are my conclusions offered merely as guides for future thought and action in this area.

Conventional Conceptions of IHIs

Conventional analyses of the nature and relevance of international institutions (in general)

may be organised in a number of different ways. In a now famous and widely cited paper, Robert Keohane organised these analyses into two major strands, the one mostly *rationalist* and the other largely *reflective* or *cognitive*.¹² In his view, although realism and neo-realism are the most avowedly rationalist of all the ‘schools’ that constitute the two strands of analysis, neo-liberalism and liberalism also subscribe to the rationalist approach.¹³ Despite their internal differences, rationalists share a commitment to the conceptualisation of international institutions and foreign policies as outcomes of calculations of advantage made by states.¹⁴ They are sceptical of reflectivist approaches, (that emphasise the role of ideas, norms and knowledge) charging that while norms, ideas and knowledge can each play a role in international cooperation, and thus in understanding the nature and behaviour of international institutions, international cooperation can be explained without reference to such constructs.¹⁵ The reflective (or critical) approaches include the various strands of cognitivism: such as the work of constructivists like Ernst Haas, Peter Haas, Martha Finnemore, John Gerard Ruggie, Frederick Kratochwil and Alexander Wendt,¹⁶ the work of postmodernists such as R.B.J. Walker and Richard Ashley,¹⁷ the work of feminists such as Peterson, Mazey and Sylvester,¹⁸ and the work of neo-marxians such as Cox and Gill.¹⁹ Despite their many differences, these reflective approaches share a commitment to a *stress* on ideas, norms and knowledge, as explanatory factors.²⁰ They are critical of rationalist approaches that they view as tending to ignore, or at best trivialise, the role of norms, ideas and knowledge in the production of the identities or self-understandings, and interests or preferences, of states – phenomena that rationalists treat as non-theorised ‘initial conditions’.²¹ In the view of reflectivist scholars, such identities and interests are not ‘exogenously given’.²²

While largely supportable, this rationalist/reflectivist typology may still be too broad for

the purposes of this article. Other typologies are in fact possible. For instance, Hasenclever, Mayer and Rittberger have adopted a different typology, classifying these conventional analyses into realist, neo-liberal and cognitivist approaches. They have also described these same three 'schools' in terms of power-based, interest-based and knowledge-based approaches to the study of international institutions.²³ I shall deal with them under the discrete headings: realism, neo-realism, neo-liberalism, republican liberalism, constructivism, and a strain of constructivist thinking that I will refer to as 'quasi-constructivism'.

While an extensive exposition of the nature or work of each of these 'schools' is in itself beyond the focus of this article, it is appropriate to note, albeit briefly, their various relationships to 'institutionalism' (the view that institutions matter in international affairs).²⁴ This is important because as Slaughter, Tulumello and Wood have recently noted,

'institutionalism' (the view that institutions fundamentally matter) is now dominant in the North American academe.²⁵ While none of the relevant schools denies institutions any impact whatsoever, realists and neo-realists (who emphasise 'relative power' as the most important influence on international cooperation) are widely acknowledged to be the least institutionalist of all of them.²⁶ Neo-liberals, republican liberals, constructivists and quasi-constructivists are all avowedly institutionalist, but disagree as to the most adequate explanatory approach to, and the most fundamental influence on, the formation, functioning and effects of IHIs.²⁷ Neo-liberals emphasise 'the effects of the institutionalised contractual environment'.²⁸ Republican liberals tend to emphasise the level of convergence of national preferences reflecting the demands of dominant domestic groups.²⁹ Constructivists emphasise the importance of ideas, knowledge and norms in explaining the creation, behaviour and effects of institutions.³⁰ Quasi-constructivists are constructivists but they attempt to reconcile constructivism with rationalistic approaches, insisting that the relevant

actors make detailed 'ends-means calculations' .³¹

However, most of these schools are characterised by a number of problematic features that orient them in ways that generate some highly consequential blind spots regarding their view of institutional or IHI effects within states. To varying extents realism, neorealism, neo-liberalism and even one or two strains of constructivism, have been overly state centric, and thus relatively neglectful of domestic politics and sub-state actors.³² They have thus focused too steadfastly and steadily on the international plane. But this kind of state centrism has not been characteristic of the work of most republican liberals, constructivists, and quasi-constructivists. The work of scholars like Audie Klotz, Kathryn Sikkink, Andrew Moravcsik, and Margaret Keck, Thomas Risse and Stephen Ropp, Anne-Marie Slaughter, Abraham Chayes and Antonia Handler Chayes, Eyal Benvenisti, and Ann-Marie Clark have followed the earlier work done by Keohane and Nye, in establishing sub-state analysis as an important part of the study of international politics and institutions.³³

Far too many of these conventional approaches have also been far too positivistic. The notable relative exception to this general trend has been the work of some constructivists and 'cognitivist' scholars.³⁴ However, as Richard Ashley has admitted, all social science aspiring to theory has had a positivist dimension.³⁵ The point though is that some of these conventional approaches to the study of IHIs have been so positivistic in their assumptions as to be manifestly incapable of capturing those valuable and significant international institutional effects that occur within states but which are not easily captured by strictly positivistic methods.³⁶

Virtually all of these approaches have also been characterised by compliance-centrism (of either the enforcement-based kind or the voluntary compliance-based type). According

to the enforcement-based sub-approach, while state compliance is the most important test of institutional value, rarely can an international norm or institution exert significant influence or generate state compliance without being *enforced* or backed by sanction. I agree with Brunnee and Toope who have suggested that many social scientists and lawyers tend to view international society, norms, law and institutions through the prism of domestic legal systems, and thus find these international entities and prescriptions to be comparatively underdeveloped and wanting in terms of not 'looking like' domestic institutions such as courts that are able to coerce compliance.³⁷ Realists (like Mearsheimer and Watson) who stress relative material power tend to be the most enforcement-centred, while those international lawyers (such as Franck, Brunnee, Toope), constructivists (Ruggie, Haas, Kratochwil) and quasi-constructivists (Sikkink, Finnemore, Keck) who stress the power of ideas, knowledge and norms are perhaps some of the least enforcement-centred. Enforcement-centrism is indeed still rife in the relevant literature. For instance, even respected human rights scholar, Henry Steiner, has declared, somewhat understandably, that: 'Institutions make rights more effective by threatening or taking actions that may lead a state to *comply*. Institutions with real power cut to the bone of sovereignty' .³⁸ As Shand Watson has put it: 'What human rights advocates are seeking is a supranational order of the hierarchical, coercive type prevalent in domestic systems to act as a check on governmental malfeasance' .³⁹

The principal organising idea for the voluntary compliance-based sub-approach is that since the consistent, routine and sustained *enforcement* of international norms and institutional decisions is all but a pipe dream, international lawyers and international relations scholars ought to abandon the vain hope of achieving international normative or institutional effectiveness mainly via *enforcement*. Instead, much more attention

should be devoted to (1) describing the processes through which the *voluntary* compliance of states is routinely secured in the real world, and (2) finding and describing ways of enhancing the prospects that states will comply *voluntarily* with their international normative or institutional obligations.⁴⁰ Voluntary compliance-based approaches are as ubiquitous in the literature as Enforcement-centred approaches but only a few examples will suffice. For example, Helfer and Slaughter have declared that: ‘Supplementing and surrounding this core of potential coercion, however, is the power of legitimacy: a court’ s ability to command acceptance and support from the community so as to render force unnecessary’ .⁴¹ Similarly, Donnelly’ s favourable assessment of the European human rights system is hinged on the demonstrated capacity of that system to generate mostly non-coerced or *voluntary* compliance.⁴² It is also on this basis that he returned a much less favourable assessment of the Inter-American human rights system.⁴³ In a similar way, Dominic McGoldrick’ s assessment of the individual petition and state reporting mechanisms of the UN Human Rights Committee is framed by the voluntary compliance sub-approach.⁴⁴ It seeks to measure how much non-coerced compliance with the norms or goals of the two mechanisms has been registered.⁴⁵

Unfortunately, however, compliance centric approaches, even when based on the voluntary compliance sub-approach (the bulk of the literature), share a blind spot. These approaches fail to capture, or capture adequately, the full picture of the various significant ways in which international norms and institutions may exert significant influence within states and their domestic institutions. *Much of the evidence of such influence lies well beyond the compliance model’s ‘radar screen’*. I have in mind such phenomena as the ability of such institutions to help create appreciable and significant levels of ‘correspondence’ without necessarily generating a high level of direct

compliance (whether voluntarily or via enforcement). I will offer evidence of this kind of post-compliance phenomena in the next part of this article.

Here again, of all the schools of thought, the constructivists, especially their quasiconstructivist strain, come the closest in my view to offering a relatively more adequate explanation for the domestic effects that IHIs can exert beyond the compliance-centred optic. Quasi-constructivists accept the notion so fundamental to constructivism that not only are ideas, knowledge and norms powerful, they play a fundamental role in international cooperation.⁴⁶ Like other kinds of constructivists, they *stress* the ‘power’ of norms and institutions, and affirm that material factors are not the only factors that shape international politics.⁴⁷ For instance, Sikkink has correctly stressed the shared values or principled ideas that primarily drives international ‘issue-networks’ working to bring about change within domestic orders (via transformation of logics of appropriateness).⁴⁸ They want, as well, to take constructivism a step further by iterating and explaining *exactly how* ideas and norms can have an impact on international politics. They also seek to specify the conditions under which norms and ideas can transform prevalent thinking and practices *within* states.⁴⁹

Additionally, quasi-constructionists have also adopted the ‘disaggregated state’ model analytical optic (as opposed to the ‘unitary state actor’ model that had been previously favoured in the literature). This conceptual posture has enabled them to pay a great deal of attention to the critical roles that are played by non-state and sub-state actors in the success of many international institutions.⁵⁰ These non-state actors include those that have been styled ‘principled issue-networks’ (PINs), ‘advocacy networks’ (ADNs) and ‘transnational advocacy networks’ (TANs).⁵¹ Sikkink has noted how these actors/networks help spur action at every stage of the process of generating correspondence

between IHI norms/goals and domestic understandings and practices.⁵²

As importantly, they have also used elements of the *rationalist approach*. For example, they have applied insights regarding the rational ‘ends-means’ calculations that Finnemore and Sikkink regard as important to the strategies and operations of the relevant subnational and state actors involved in the promotion of the goals and norms of IHIs, as such actors facilitate a process that these scholars have referred to as ‘strategic social construction’.⁵³ Risse and Sikkink have also used a kind of rationalistic analysis to supplement their largely ‘liberal’ constructivist account of the processes through which IHI norms are dynamically socialised into domestic practices.⁵⁴ So have Keck and Sikkink who, even while steeped in the constructivist language of norms, social relations and inter-subjective understandings, have used the rationalist language of constraints, strategies, institutions and rules.⁵⁵ To these scholars, the TANS that can often facilitate IHI effectiveness are simultaneously ‘principled’ and ‘strategic’ actors.⁵⁶ What is more, Keck and Sikkink do admit that TANS often employ ‘coercive’ strategies (such as armtwisting and the encouragement of sanctions) against a target state.⁵⁷

In the end, most quasi-constructivists will agree with Sikkink’s theory of IHI effectiveness and worth. According to her:

The [International Issue] networks [made up of private western charities, local and international NGOs and IHIs] were influential within states because they contributed to *a reformulation in the understandings* of national interest [and thus of ‘human rights discourse’] at times when traditional understandings of sovereignty and national interest were called into question by changing global events.⁵⁸

Thus, Quasi-constructivists see clearly the possibility of the occurrence of ‘correspondence’ between IHI norms/goals and domestic socio-political and legal

change of a kind that is not easily subsumed within the ‘compliance-based’ analytical optic; of the kind that Makau Mutua did envisage in his brilliant review of Shand Watson’s book on IHIs; and of the kind that Peter Burns and the present writer had discussed in an earlier paper.⁵⁹ Yet, even the highly developed (and generally convincing) theoretical framework that has been developed by the quasi-constructivists does not seem to explain *fully* the occurrence of what I have styled the ‘ACHPR phenomenon’. I will return to this last point more fully in a later section of this article, but will now conclude the present section by briefly discussing the nature of the ‘ACHPR phenomenon’ and offering a relatively brief insight as to why it poses a problem for existing conceptual frameworks for understanding the effects that IHIs can exert within states.

The ‘ACHPR Phenomenon’ as a Problem for Conventional IHI Theories:

A Brief Insight

The ‘ACHPR phenomenon’ stands for the level of generally *non-coerced* and *non-cajoled* influence, facilitated by local popular forces, that the African system has exerted within Nigeria – a level of influence that, over time, contributed significantly to a modest, if palpable, transformation in the dominant ‘self-understandings’, senses of ‘appropriate’ governmental behaviour, and conceptions of ‘national interest’, that were held by key subnational actors and institutions during a period in which that country was governed (for 12 of 14 years) by dictatorial military regimes, and at a time when it was widely acknowledged to be one of the two most powerful African states.

The evidence for the existence and significance of this phenomenon will be supplied

later in this article, but it is important, in conclusion of the present section, to offer a brief preview of the reasons why this ‘ACHPR phenomenon’ poses a significant problem for most pre-existing theories of IHIs.

As has already been discussed, realism and neo-liberalism are the least explanatory with respect to those important domestic effects of IHIs (like the ACHPR phenomenon) that occur beyond the compliance-centred radar. This point will not therefore be reiterated here. However, since the other ‘schools’ come much closer to offering an adequate explanation of the range of domestic influence exercisable by IHIs well beyond the compliance-centred optic, a brief exposition of their own inadequacy as explanatory theoretical approaches, in the present respect, will now be offered.

The major reason why the republican liberals cannot adequately explain the ACHPR phenomenon is that that theory (at least as ably advanced by Andrew Moravcsik) seems to have confined itself to explaining the impact that IHIs can have *within already (if newly/weakly) democratised* states, and as such does not really have any explanation for significant IHI impact within *dictatorships*. This theoretical school has also focused on attempting to ‘measure’ the extent of state compliance with IHI ‘edicts’ as the chief indicator of IHI value. Mainstream constructivism (that is, other constructivists save the quasi-constructivists) comes very close to offering a convincing explanation of this phenomenon. However, the now-waning historical tendency of some (not all) adherents of that school to treat states as unitary actors has meant that some members of this school have too often *not* paid sufficient attention to the role that non-state actors such as *local* popular forces can play, and have often played, in ensuring IHI effectiveness. This posture can be problematic in the context of attempts to explain a process via which an IHI (such as the African system) that is widely viewed as relatively ‘weak’ has exerted a modest but significant level of

influence on a number of domestic governance institutions within the borders of a relatively powerful state actor such as Nigeria, largely in partnership with various sub-state actors. Nevertheless, despite this historical weakness in the work of a few adherents of the mainstream constructivist school, the explanation for the ACHPR phenomenon that I offer in this article is still largely steeped in the broadly constructivist idiom or framework.

Even though quasi-constructivism (which is still a broadly constructivist theoretical position) more adequately explains the ‘ACHPR Phenomenon’, this theoretical approach is still not *totally* explanatory of the extant phenomenon. While this is not the place to go into this matter in any detail (as this will be done later), it will suffice to mention in brief some of the major obstacles that militate against a completely quasi-constructivist explanation of that phenomenon. In general, existing quasi-constructivist theories:

1. Tend to over-state the significance of the leadership of the ‘issue networks’ or ‘advocacy networks’ (that often serve as the engines that drive the processes through which IHIs exert domestic influence) by *foreign* (‘international’) as opposed to *local* nongovernmental organisations (NGOs). While they regard local NGOs as important, they place far too much emphasis on what foreign agents and institutions can do *for* local NGOs as opposed to what local human rights NGO and other popular forces (as agents) can do *with* IHIs and other non-local institutions and actors. This posture is not explanatory in the Nigerian case. While foreign agents such as foreign charities have played a highly significant role, that role has not been the most crucial or critical element of the local struggle. There is little or no evidence, for instance, to suggest that more money was pumped into Nigerian

human rights NGOs by foreign charities than was pumped into states that were not as markedly affected by the relevant human rights networks and institutions. The more critical factor seems to relate to the creativity and courage of some of the local popular forces that operate in Nigeria.

2. Tend to overstate the role that can be, and has been, played by *coercive* pressure in bringing about a transformation in the thinking and practices of states that are viewed as recalcitrant. This is not explanatory in the Nigerian case. While pressure can and often does achieve some results in such cases, coercion in itself has not been particularly critical in the Nigerian case. During the relevant period, very little real *coercive* pressure was put on Nigeria's various military regimes by external forces. Such coercion as was exerted was limited to relatively soft sanctions as the denials of visa to some officials sometimes and closure of one or two diplomatic missions. As such, the 'ACHPR phenomenon' developed, and modest transformations occurred, within Nigeria, without a significant amount of *coercive* pressure being mounted against the rulers of that country.

Following a detailed consideration, in a later section, of the evidence for the existence and significance of the ACHPR phenomenon, a fuller discussion of the above questions will be offered. It is important at this juncture, however, to turn to a brief discussion of the nature of the conventional conceptions of the African system – the IHI that stands closely examined as our case study.

Conventional Conceptions of the African System

The literature on the African system is riddled with the sorts of blind spots already

discussed above as the more general institutions or IHI literature sets.⁶⁰ The pre-dominant attitude in the literature has been to apply either the domestic or the European analogy to the system and then to declare, often too quickly, that the system is the ‘*least* developed or effective ... the most controversial of the three established regional human rights regimes involve African states [that is, the African system]’.⁶¹ This attitude to the system is rather rampant in the literature, and while it may have been somewhat justified, say, ten years ago, viewed from the evidence available today, it is hardly an unassailable position.⁶²

Still, the conventional consensus has been that the system is ‘weak and ineffectual’. The Charter, the Commission, and even the proposed (and not yet operational) Court, have all been assessed as ‘weak and ineffectual’ or likely to be ‘weak and ineffectual’.⁶³ It is one thing to describe this system as ‘weak’, but another to so easily and quickly dismiss it as ‘ineffectual’. To dismiss it as such today would, as Chidi Odinkalu has put it, be ‘ill informed, ignorant, or both’.⁶⁴ Some of these rapid and harsh dismissals of the African system can even be justifiably accused of being clouded by a taint of ‘afro-pessimism’.⁶⁵ The justification for this last assertion will be clear from the evidence adduced in the next section of the article – evidence that is even then still not exhaustive of the available evidence regarding the full extent of the valuable, if clearly modest, contributions that the African system has made and can make to both domestic and international politics in Africa. *The point is not of course that that system is still not confronted with a lot of challenges and problems.* The point is that, while it has never been, should never be, and perhaps will never become, an Austinian-style sovereign, given the particularly difficult circumstances in which it has had to function, the system has tended to discharge itself quite creditably.

Nevertheless, conventional assessments of the African system have also tended to

imagine it as some kind of potential panacea, often chiding it for not having succeeded in eliminating Africa's human rights problems.⁶⁶ These assessments often give the impression that this is what the mandate of the system is, or could be. Surely, that is an unrealistic expectation of *any* international institution. In this connection, Rachael Murray has correctly complained of the tendency in the literature to portray the as yet non-operational African Court of Human and Peoples' Rights (a potential component of the system) as the panacea for the human rights problems that plague many African states.⁶⁷

These conventional approaches have also tended to view the textual or organisational reform of the system as *the* key to its effectiveness or significance. While textual or organisational reform is not unimportant, to focus on it as the key to the system's effectiveness is, for the most part, misguided. That kind of approach ignores increasing evidence that such institutions are able to exert influence not as much because of how they are organised or what their enabling texts say *per se*, but much more because of how they read the text or engage with key state and sub-state actors, for example, via processes of *trans-judicial communication*, facilitated by local popular forces, that will be discussed in the next section. Organisational reform may enhance this process of communication but is hardly ever the key factor.⁶⁸ So an IHI or other institution with an ideal text and an ideal organisational structure may fail to become influential within states, while one with a less than ideal text or organisational structure may become extremely influential. These conventional understandings of the African system have also tended to be compliance-centred in orientation (in either the enforcement-based or voluntary-based senses). As such, these understandings have too often missed the existence and significance of those forms of IHI fostered

‘correspondence’ that lie beyond the compliance-oriented ‘radar’ . Similarly, adherents of that position have almost always remained incognizant of the occurrence and significance of the ACHPR phenomenon. The enforcement-centrism of much of the relevant literature is clearly evident in the many otherwise valid critical reviews that the system has received – the system has been chided time and time again for its apparent inability to ‘enforce’ its decisions.⁶⁹ The voluntary compliance-centrism of much of the same body of literature is evinced by the tendency to criticise the system for the low rate of direct state compliance with its decisions.⁷⁰ While the achievement of a very high level of direct voluntary compliance with the system’s decisions by state actors is a laudable ambition, it is not at all clear why that index should constitute *the* only or key measure of the system’s significance and value. What is clear though is that in the absence of adequate recognition of the ‘ACHPR phenomenon’ or of the possibility of ‘correspondence without direct compliance’ , then direct compliance becomes *the* only way of assessing the system’s worth and value. Yet, in such a case, only a partial picture of the range of effects that the system can exert within states is revealed.

In the following section, I will offer some of the evidence that is currently available regarding the existence of the kinds of valuable ‘correspondence’ (without compliance as such) that has been referred to earlier in the article, as well as disclose some of the evidence that grounds what I have styled the ‘ACHPR phenomenon’ . Following that, I will make a case for the centring of the study of (IHI induced and popular forces-facilitated) ‘correspondence’ . This paradigm shift must occur if observers of IHIs are to better account for the domestic effects that are attributable in some way to the existence and functioning of IHIs. Implied in this argument is the concomitant conviction that IHIs like the African system can under certain conditions contribute

meaningfully to the domestic social justice struggles that rage within states, and that they can do so most effectively when they are deployed in creative ways by local popular forces within the domestic governance institutions of state actors. Also implied in the arguments is that, even with all their limitations, IHIs can often make meaningful contributions to the peacebuilding efforts of many a deeply fragmented society.

The Impact of the African System within Nigeria (1987 - 2001)

It would be idle to claim that the commission has acquired or will ever command the spontaneity of compliance enjoyed by the Oracle of Delphi. However, any temptation to dismiss it as a worthless institution today must be regarded as premature, ill-informed, or both.⁷¹

Observed through this more holistic optic, the African system appears to have exerted a modest yet significant level of influence within at least one African state - Nigeria. Modest as it appears, this feat is still quite remarkable given the fact that Nigeria was for all but two of the 14 years (1987 - 2001) under consideration governed by military regimes that were largely dictatorial. In any case, however modest its domestic effects have been, the African system's impact within a state that has been governed in a largely dictatorial manner flies in the face of almost every prediction regarding the likely locations of the system's impact. For instance, writing in 1992, Claude Welch, a foremost observer of the system, was convinced that: 'The impact [of the system] likely will be felt mostly in states which have leaders who begrudgingly recognize human rights and whose efforts can be encouraged by the Banjul Charter's existence'.⁷² Welch's prediction was clearly that the African system would not be able to exert a significant level of influence within a country that was, during the relevant period,

governed by a dictatorial military regime. The point that is being made here is that this prediction has not been borne out by the evidence that is now available.

As interesting is the fact that this modest but significant feat was accomplished in close ‘alliance’ with the many local popular forces, especially certain human rights nongovernmental organisations (NGOs), who acted as the go-betweens or intelligent *transmission-lines* between the African system (on the one hand) and various institutions and actors within Nigeria – such as the courts, the executive, the legislature, sub-state groups, and individuals (on the other hand). In this process of *trans-judicial communication*, Nigerian NGOs played the role of brainy relays that did not merely transmit normative energy and values, but also contributed to the development and strengthening of both the Nigerian human rights regime and the African system itself. Here I am reminded of Kathryn Sikkink’s insight regarding the ways in which our appreciation of the workings of international regimes (such as IHIs) is immediately deepened and expanded when once we factor in ‘the role of nongovernmental actors [and networks] in developing norms and helping to create, monitor, and strengthen some regimes’.⁷³ This article is thus situated within the more general international law/international relations literature that emphasises the value of norms, ideas and knowledge in shaping the identity, thinking and behaviour of both state actors and the dominant actors within their domestic governance institutions, and emphasises as well the roles of non-state actors in the construction and dissemination of such norms, ideas and knowledge. In this sense are the arguments made here broadly ‘constructivist’ in nature.

In what follows of this section of the article, I will discuss some of the evidence that supports these contentions. It includes a sample of the available evidence regarding the

ways in which a network of popular forces (in which human rights NGOs were central) has greatly facilitated the impact that the African system has had within Nigeria.⁷⁴ This body of evidence tends to support my call for a shift toward the adoption of a more holistic paradigm for assessing IHIs. It tends to support my thesis that regardless of how IHIs perform against the conventional tests of effectiveness, these institutions can still help make a difference within states when used or deployed *creatively* at local levels by interested local agents such as the network of popular forces (including human rights NGOs) that I have referred to already. Here are a number of illustrations of the influence that the African system has had within the judicial, executive, legislative arms of government in Nigeria, as well as of its influence on the course of popular activism in that country.

The African System's Influence on Judicial Reasoning and Action in Nigeria

The significance of the modest influence that the African system has exerted on judicial thinking and action within Nigeria is exemplified by the two decisions that are discussed below.

*The Zamani Lekwot Case:*⁷⁵ In 1993, seven prominent leaders of the Kataf ethnic minority in the Northern Nigerian State of Kaduna were arrested, detained, tried before a military tribunal headed by Justice Benedict Okadigbo,⁷⁶ convicted and sentenced to death. These persons were Major-General Zamani Lekwot, James Atomic Kude, Yohanna Karau Kibori, Marcus Mamman, Yahaya Duniya, Julius Sarki Zamman Dabo and Iliya Maza. Upon a communication filed on their behalf by the Constitutional Rights Project (CRP), the African Commission on Human and Peoples' Rights indicated

interim measures to the effect that the Nigerian military government should suspend the implementation of the sentence pending the outcome of the matter. This indication of interim measures was formally non-binding on the Nigerian military government. The Nigerian military government was duly notified of the African Commission's decision to indicate interim measures. This interim decision was also given extremely wide local publicity by the CRP and its allies in the mass media. The CRP also instituted an action at the Lagos High Court in Nigeria asking the court to compel the Nigerian Military government to respect the African Commission's request that the planned executions be stayed. In technical legal terms, the CRP asked for an interlocutory injunction restraining the Nigerian military government from executing the seven convicted persons pending the determination of their communication before the African Commission. The communication was itself based on the rights that had been guaranteed to them under the African Charter on Human and Peoples' Rights.⁷⁷ The court per Onalaja, J. (as he then was) granted the application and dismissed the government's objections that the court had no jurisdiction to hear the matter. It held that it was necessary to grant the injunction in order to preserve the subject matter of the communication before the Commission, that is, the lives of the convicted persons. Without this injunction, the court reasoned, the government could go ahead and execute them thereby rendering the anticipated decision of the Commission nugatory. The government did not execute the convicted persons. At the conclusion of the parallel matter before the African Commission in 1996, the Commission found grave violations of the due process guarantees of the Charter. It also requested the Nigerian Military government to release the convicted persons from prison. They eventually regained their freedom in 1996.

It is important to note here that the injunction granted to the CRP suspending the

executions would not have been possible under Nigerian law had the CRP not deployed the Charter and the Commission as a major part of its struggle to stop the executions and free the convicted persons. This was because Decree 2 of 1987 (authorising detentions without trial) and Decree 55 of 1992 (establishing the military tribunal that convicted the relevant persons) clearly ousted the court's jurisdiction to inquire into the matter. The only way the court could have assumed jurisdiction under the prevalent mode of legal reasoning in Nigeria was for the NGO to deploy the Charter, which had been incorporated into Nigerian law, and then approach the Commission in the way it did. The court regarded the Chapter 10 of the Laws of Nigeria 1990, which had incorporated the Charter into Nigerian law as a 'decree with a difference' and a 'decree with international flavour'. In the court's view, Chapter 10 is deemed to be a decree under Nigerian law and binds the Nigerian government as long as it remains a part of the OAU system. In that case, since Chapter 10 (on the one hand) and Decrees 55 of 1992 and 2 of 1987 (on the one hand) stand in conflict, the court decided to rely on the particular legal instrument that preserved its jurisdiction (as against the ones that ousted such jurisdiction). The court then relied on Chapter 10 (the legal instrument that incorporated the Charter into Nigerian law. But the court could not have granted the injunction if the CRP had not approached it with a request for that relief. For Nigerian courts do not act *suo motu*, that is, of their own motion. And the CRP would have stood on much shakier ground had they not approached the court with an interim measure indicated by the Commission. For no matter how progressive a Nigerian Judge is, they are usually committed to a kind of legalistic mode of reasoning and need to be offered a cogent legal argument on which to found their decision. The stronger the argument appears to the court, the greater the chance of success. This is especially so when the anticipated decision would be novel, challenging

to the government of the day, and directed at the decision of a strong military government. In the end, the interim measure indicated by the Commission was also the legal excuse needed by the court to act in the way it did and yet remain relatively secure in an atmosphere where the judiciary was already under siege from the military government. It could always claim to be bound by the legal logic that was set up when the CRP approached the African Commission and obtained the indication of interim measures. And this argument was eminently plausible given that Section 1 of Chapter 10 demands that all the state institutions of Nigeria comply with the provisions of the Charter – the very document that establishes and empowers the Commission. It was in this context, as well as in the more general context of socio-political struggle that the CRP creatively deployed the Charter, the Commission, the Nigerian courts and the mass media as resources in its much successful struggle to actualise the rights of seven citizens of Nigeria and save them from the gallows. It was in this sense that two institutions of the African system, the African Commission and the Charter, served as resources that ‘added value’ to and expanded the range of, the arguments and strategies available to the CRP. This IHI, the African system, empowered the relevant NGO and tipped the balance of argumentative/discursive force in its favour. Though the African system was reliant on the CRP and the network of local popular forces at play here to transmit the system’s norms, values and knowledge to the Nigerian courts, executive, and wider public, the favourable end result was clearly attributable to the net effect of the African system’s operation and deployment as a resource both without and within Nigeria.

*The Newspapers Registration Decree No. 43 of 1993 Case:*⁷⁸ In 1993, the then military government of Nigeria annulled the election on June 12 of that year of Moshood Abiola

as President of Nigeria. The mass media was vociferous in its condemnation of this action. In response to the hostile posture of the mass media, the Babangida regime promulgated Decree No.43 of 1993. This decree set out a number of extremely stringent conditions that had to be met before a newspaper could lawfully operate in Nigeria. These conditions included the payment of huge sums of money by newspaper publishers and fresh registration of all newspapers circulating in Nigeria, which registration was to be renewable at periodic intervals. Two Nigerian NGOs, Media Rights Agenda and the Constitutional Rights Project collaborated and filed a communication at the African Commission. The Commission held that the Decree violated several provisions of the African Charter.

The collaborating NGOs then filed an action in the Lagos High court asking the court to declare the Decree null and void. Part of the resources that these NGOs relied on in making their case before the Nigerian courts and before the court of public opinion in Nigeria was the decision of the African Commission. The court, per Humponu-Wusu, J dismissed the preliminary objections of the military government and found for the NGOs. In dismissing this objection, it held that since the African Charter was a part of our law vide Chapter 10 (which has the force of a decree), and since Chapter 10 conferred jurisdiction on the court it had jurisdiction to try the case. The court also noted that any domestic legislation, including Decree 43 of 1993, that was in conflict with the Charter was void to the extent of that conflict.

It is important to note that following the decisions of the African Commission and the Nigerian court, Decree 43 was very rarely (if at all) enforced by the military government, and was soon repealed. It is a thing of regret though that the Press Council Decree No.60 of 1995 which contains some similar provisions was promulgated by the government on

the very day that Decree 43 was repealed. However, this later Decree has not been enforced to date. The legal validity of this last Decree is currently being challenged in the courts by Media Rights Agenda (MRA), and may soon be repealed by the National Assembly.⁷⁹

Here, it is important to note that the limited success that was enjoyed by the MRA and the CRP in getting this Decree repealed was a result of the deployment of a number of resources to that struggle: the Charter, the African Commission, the mass media and the courts. In moves that bore a striking resemblance to those made in the Zamani Lekwot case, the African Commission was approached by a network of NGOs and other popular forces both as a way of strengthening the hands of a local judge, and as a way of ‘adding value’ to the operation and power of the legal arguments that they could make within Nigerian courts. The African Commission ruled in the NGOs’ favour. The African Commission’s decision was cited to the local high court judge. This judge then held in favour of the NGOs that had brought the matter before it. All the while, a massive press campaign had been waged to sensitise the public and embarrass the ruling military regime. A combination of these measures worked (even if only partially in the last case).

Here again, we see evidence of the form of *trans-judicial communication* that has been created and facilitated through the ingenuity and hard work of local NGOs and other popular forces in Nigeria. Here the communication was trans-judicial because norms, knowledge, information, legal logic and normative energy travelled some distance between a quasi-judicial international institution and various institutions within the target nation-state. In this case, it has travelled to the courts and executives of the targeted state, Nigeria. But this was not a direct form of communication. Rather it was a mediated form of communication, one that was creatively initiated, brokered,

transmitted, oiled and serviced by local NGOs and their partners. This form of trans-judicial communication has also been both two-pronged and monist – in the sense that the relevant NGOs have used both the international and the domestic fora almost in the same uninterrupted movement.

The African System's Influence on Executive Action and Behaviour in Nigeria

Even though the influence that the African system (and of the broader virtual to which it belongs) has had on the Executive branch of government, and on executive action within Nigeria, has been less marked and much perhaps more modest than that system's corresponding impact on judicial decision-making and action within Nigeria, it has been significant nevertheless. Here the argument is that the African system has been a key part of a virtual human rights network (that included local human rights NGOs, activist lawyers, the independent press and activist judges) that has exerted a significant, if modest, level of influence on executive action within Nigeria. Here again, the argument is not that the African system's efforts 'caused' the observed behaviour in the same way that a twist to the hand causes pain. The overarching point that will be demonstrated is that the system's efforts have (in various ways and senses) *helped* to foster a significant and valuable level of 'correspondence' between the behaviour of the executive branch within Nigeria (on the one hand), and the goals and norms of the system itself (including the decisions and resolutions that have emanated from that institution) on the other hand. In each case, the system's efforts were invigorated, complemented and facilitated by the work of its virtual network partners. But the system's own efforts were often as *important* as the work of these partners.⁸⁰

A couple of examples (taken from a far more extensive collection of evidence) will serve to illustrate this point.

Modification of Legislation: Under the Nigerian military, the Executive branch was for all their years in power an integral part of, and indeed controlled, the legislature. That is partly why such military regimes were considered to be more or less dictatorial in nature. Given the nature of this governance architecture, legislative action was also, in effect, executive action. Legislative action could not, and did not, proceed except with the approval of the Executive. It is for this reason that I consider the changes that were made to the Decrees of the military government, in order to bring them in line with some of the relevant decisions and resolutions of the African Commission, to be *both* legislative and executive action at one and the same time. These changes are discussed as part of my consideration of the influence of the African system within Nigeria's legislative processes. But suffice it to note here that certain decisions and resolutions of the African system did generate some 'correspondence' within the Nigerian legal order – in the sense that *executive action* was in fact significantly influenced by these decisions and resolutions.

Suspensions of Trials and Executions: At its second extraordinary session held in Uganda in December 1995, just after the Nigerian government had executed the Ogoni 9 (among the first batch of those that had been tried), the African Commission decided to ask the Chairperson of the Organization of African Unity and the Secretary General of the same body to 'express to the Nigerian authorities that no irreparable prejudice is caused to the 19 Ogoni detainees whose trial is pending'.⁸¹ This indication of interim measures was in fact transmitted to the Nigerian government, and followed up with an

on-site investigative mission. The proposed trial of the Ogoni 19 (second batch) was stayed, and they were later released without a trial being held. Now, it would be implausible to argue that the trial of these detainees was stayed *only because* of the Commission's indication of interim measures. *A number of other factors were clearly at play as well.* There had been a massive international outcry over the execution of the trial and execution of the first batch of the Ogoni detainees, local NGOs and the press had made a lot of fuss about the matter, Nigeria had been clearly embarrassed by its strong condemnation in public by South Africa and Zimbabwe (a treatment that is usually reserved for the very worst cases within the Organization of African States, and even then rarely meted out). Nigeria had also been *expelled* from the Commonwealth. Nevertheless, it is reasonably clear from an analysis of the events surrounding this matter that in a psychological sense, the condemnations by the African leaders and by the Commission seemed to hurt the regime's moral composure much more than those of other international entities whose actions could easily be dismissed in post-colonial Nigeria as improperly motivated. The condemnations of the African Commission and other African states were not as easy to dismiss.⁸² In any case, the indication of interim measures by the Commission was clearly one of the factors weighed by the regime in arriving at its decision to stay the trials of the Ogoni 19. And incontrovertibly, it *contributed* significantly to the generation of 'correspondence' with its goals exhibited by the behaviour in this case of the Executive branch of government in Nigeria.

In the *Zamani Lekwot case*, the Commission's indication of interim measures was also deployed within Nigeria by the Constitutional Rights Project (CRP), a local NGO, in a way that led to the suspension of the execution of the General Lekwot and other leaders of the

Kataf ethnic group, and later on to the commutation of their death sentences to five-year jail terms and eventual release by the Babangida-led military regime. This case has already been discussed at length. Suffice it to say that given the fact that the release of General Lekwot et al. was in fact ordered by the Executive, then it is reasonable to conclude that the Executive was markedly influenced, albeit indirectly, by the efforts made by the Commission, a part of the African system. Further evidence for the fact that the Commission's views and pressure played a significant role in producing the desired outcome could be obtained from the fact that the Commission took a very active interest in the end-results of its decision in this case, and even took the file with it to Nigeria during its on-site investigative trip to that country.⁸³ In any case, 'correspondence' was produced between the decision of the Commission and the actions of the Executive within Nigeria.

It is noteworthy as well that the argument that has been made here is not that 'correspondence' occurs automatically, or that the African system's views are in all cases 'complied with' by the Executive. In fact, in Communication 87/93, the interim measures that had been indicated by the Commission against the execution of Ken Saro-Wiwa and others pending the Commission's consideration of the matter before it, were ignored by the Abacha military regime. Instead, what has been urged is that a valuable level of 'correspondence' is possible (outside the 'compliance' optic or radar), and that this sort of phenomenon has in fact occurred in a significant number of cases in the Nigerian context.

Release of Detainees: In Constitutional Rights Project (in respect of Wahab Akanmu and others) v Nigeria, Communication No.60/91, 100 detainees who had been tried,

convicted and sentenced to death for armed robbery in accordance with the Armed Robbery and Firearms Decree 1974, petitioned the African Commission, through the Constitutional Rights Project (CRP). The Decree under which their trial proceeded made no provision for an appeal from the conviction and/or sentence. The Commission found that the Decree violated Article 7(1)(a) of the African Charter, and recommended that the petitioners be compensated. Due to the efforts of the CRP who deployed the Commission's decisions in pressing the government to effect their release, all of the detainees were eventually released.⁸⁴ Again, in releasing the petitioners, the government was not necessarily 'complying' directly with the decision of the Commission. Nevertheless, the decision helped in a very significant way to produce 'correspondence' with the Commission's views within Nigeria. In this way did the Commission influence markedly although somewhat subtly and indirectly the actions of the Executive branch of government in Nigeria. As well, in the *Zamani Lekwot case*, and in the *Ogoni 19 matter*, a number of detainees were released in ways that suggest some correspondence with the views of the Commission. These cases have already been discussed above.

Non-Enforcement of Draconian Press Laws: In the *Newspaper Registration Decree Case* (already discussed) the African Commission's decision that the extant Decree violated several provisions of the African Charter was relied upon by two Nigerian human rights NGOs in their successful suit before a local High Court to declare the Decree invalid. It was also a critical resource in their public debate with government officials about the 'justness' of the Decree's provisions. The *net effect* of the Commission's decisions and the work of its network partners on

this issue was that the Decree was never enforced by the Executive, and was later repealed by a military legislative body dominated by the Executive. Clearly therefore, the African system had in this case helped to produce a significant and valuable level of ‘correspondence’ with its views on that Decree within Nigeria.

The African System’s Influence on Legislative Action in Nigeria

Here, two examples from a much more extensive pool of evidence will suffice to illustrate my arguments:

The Civil Disturbances (Special Tribunal) Act of 1987.⁸⁵ This legislation was enacted by the Babangida military regime in March 1987. It provided for the establishment of a special tribunal to conduct the trial of persons charged with offences related to a communal or civil disturbance. The tribunal was to be composed of a serving or retired superior court judge as its chair, and four other members, ‘one of whom shall be a serving member of the Armed Forces’.⁸⁶ It also provided for the confirmation of the any conviction or sentence passed by the tribunal by the *Armed Forces Ruling Council*, the military junta that at that time ran the executive and legislative branches of government in Nigeria.⁸⁷ Thus, persons convicted and/or sentenced by the tribunal had no right of appeal to another judicial body. As importantly, the Decree had also ousted the supervisory powers of the High Courts over the proceedings of the tribunal.⁸⁸

The membership on the tribunal of a serving member of the armed forces, and the absence of a judicial right of appeal from the decisions of the tribunal were repeatedly

pilloried in very explicit terms in a number of decisions and resolutions issued by the African Commission. In the *Zamani Lekwot* Case, the Commission found that both of these features were clear violations of the African Charter.⁸⁹

Similarly, in a number of decisions and resolutions, the Commission has pilloried and declared ‘Charter-illegal’ the kind of ‘ouster clause’ that was contained in the relevant Decree.⁹⁰ At its second extraordinary session, primarily convened in order to deal with the execution of the Ogoni 9 and with other aspects of the Ogoni matter, the Commission also expressed similar concerns regarding the compatibility of this law with the African Charter.⁹¹ These features of the Decree were also criticised at a number of other international fora.⁹²

On 5 June 1996, the then military government promulgated the *Civil Disturbances (Special Tribunal) (Amendment) Decree*. This Decree removed the Armed Forces member of the tribunal, and provided for the right of appeal to a Special Appeal tribunal. This is an example of the ‘correspondence’ of legislative action with the views of the Commission – views that had been explicitly and strongly opposed by Nigeria! It is not plausible, really, to argue that these legislative provisions were changed by the military *because* of a simple desire on their part to ‘comply’ with the views of the Commission. There were a number of other internal political and social forces at work in this case. What is clear, however, is that the repeated condemnation of these legislative features by the Commission played a *very critical role* in producing such ‘correspondence’ . Having explicitly opposed the resolutions and decisions that first recommended the repeal of these same legislative provisions, the Nigerian government was obviously aware of the Commission’s views on the matter, and took them seriously enough to respond so strongly in opposition thereto. In fact, in defence of the relevant decisions, the

Commission had to fend off a very determined Nigerian military regime that had charged that the Commission had no power to interpret the Charter, or pronounce on the validity of Nigerian laws.⁹³ The Commission's views on this matter was thus one of the critical factors that operated on the mind of the regime as it considered what course of action to take. In the end, it reached a decision that reflected the Commission's recommendations almost to the letter. It is not unreasonable therefore to deduce logically that the Commission's work was influential in this case.

The State Security (Detention of Persons) Act of 1984:⁹⁴ This legislation was passed by the Babangida military regime in 1984. It aimed to: 'Empower the Federal Military Government to detain persons for acts prejudicial to State Security for a period not exceeding six months *at a time*, and to provide for a review of such detention'.⁹⁵ This Act was subsequently amended by the *State Security (Detention of Persons) (Amendment) (No.2) Decree No.14 of 1994*. Passed into law by the Abacha military regime, this Decree introduced a new section 2A into the existing Act that precluded courts from issuing the writ of habeas corpus or any other such writ aimed at the production in court or release from detention of any person detained under the 1984 Act (formerly referred to as Decree 2 of 1984).

The African Commission specifically declared this Act (as amended) to be 'Charterillegal'.⁹⁶ Its prohibition of the issuance of the writ of habeas corpus by the courts clearly offends the guarantees of the right to liberty under the African Charter. Similarly, the Act contained an 'ouster clause'.⁹⁷ The Commission has also condemned this sort of clause as, *inter alia*, a violation of the Charter's guarantee of the right to a fair trial.⁹⁸ On 7 June 1996, the Abacha military regime promulgated the *State*

Security (Detention of Persons) (Amendment) (No.2) (Repeal) Decree No. 18 of 1996. This last Decree repealed Decree 14 of 1994, thus restoring the legal capacity of the courts to issue a writ of habeas corpus or the like so as to order the production in court or release from detention of a person detained under the *1984 Act*. In addition, that military regime ordered a wholesale review of the cases of all those detained under the Act. About 12 persons regained their freedom as a result of this particular review.⁹⁹

This is another example of the ways in which the Commission's efforts *helped* to produce a very valuable form of 'correspondence' between its decisions and the legislative actions of the Nigerian military government. In consequence, these efforts also helped to produce the same kind of 'correspondence' between the contents of a specific legislation and the relevant views of the Commission. The Commission's views were one of the factors that operated on the minds of the military as it made these changes. This much is deducible from the regime's explicit and strong opposition to the decisions of the Commission that had condemned the aspects of the legislation that it subsequently altered to correspond with the Commission's views. In any case, the then ruling Nigerian military junta did almost exactly what the Commission preferred to be done. There is not much room for *reasonable* doubt as to the fact that the Commission's views influenced the decision to change the offensive features of the relevant law.

In the foregoing section of the chapter, I have attempted to demonstrate the significant but modest level of influence so far exerted by the African system on the thinking and action of the judiciary, the executive and the legislature within Nigeria. What I will attempt to do in the following sub-section is to discuss analytically the various ways in which the African system has also exerted a significant amount of influence

on the strategies and activities of certain *popular forces* that have operated within Nigeria.

The African System's Influence on Popular Forces in Nigeria

Here, two telling sets of examples will suffice to illustrate my point.

Influence on the Work of NGOs, Activist Lawyers and Minority Rights Advocates:

Elsewhere in this section, I have argued that the African system has been of significant influence on judicial, legislative and executive action within Nigeria. However, an examination of the operations or mechanics by which such influence was exerted reveals that the system was only able to work in the way it did largely because it allowed itself to be mobilised and deployed in creative ways by various activist groups that operated *within* Nigeria. Yet, in most cases, had the system not allowed itself to be so mobilised, the said activists would *not* likely have achieved the results that they did. This much is evident from our consideration of the *Zamani Lekwot* and *Newspaper Registration Decree cases*. The system's influence enabled them to persuade the courts to take cases that would not have been taken under national legislation; to proffer creative legal arguments; to launch legal manoeuvres that would not have been possible otherwise¹⁰⁰ and thereby persuade many courts to rule in their favour,¹⁰¹ to persuade many in the discerning public to put pressure on the military regime to act in the ways in which these activists desired, to justify preferred interpretations of existing constitutional provisions,¹⁰² and to embarrass (and de-legitimise) the military on many occasions, thereby helping to transform public ideologies regarding the appropriateness of military rule and many of its characteristic practices. In these ways did the system markedly facilitate, invigorate, and thus

influence, the work of these activist groups. It provided them with an invaluable resource with which to circumvent some of the absolutist machinations and actions of the ruling military dictatorships. It helped them very much to save a number of lives, secure the freedom of many, and remain relevant to Nigerian political life. As such, the African system was as useful to these popular forces as these popular forces were to the African system.

As well, the Charter has featured very prominently in the ‘education’ campaigns of many NGOs. For instance, Shelter Rights Initiative has produced a *Manual on Gender Rights Litigation and Protection Strategies* that relies heavily on the African Charter.¹⁰³ So do almost all of its other manuals.¹⁰⁴ The *Textbook for Human Rights Teaching in Schools* produced by Constitutional Rights Project is also as heavily indebted to the text of the African Charter. And given the non-justiceability of the economic and social rights provisions of the Nigerian Constitution, the Shelter Rights Initiative and SERAC have had to rely *almost entirely* on the presence of such rights in the African Charter as its basis for its legal and public advocacy for the implementation of such rights in Nigeria.¹⁰⁵

Most Nigerian NGOs send representatives to the sessions of the Commission, and benefit thereby from knowledge of its jurisprudence, resolutions, decisions and processes.¹⁰⁶

Influence on the Struggle for Press Freedom: All too often during the relevant period, the relevant military regimes launched severe attacks on the freedom of the press (including closures, arrests and detentions).¹⁰⁷ To the eternal credit of activist journalism in Nigeria, the extremely courageous and creative independent press (made up of news magazines such as *Tell* and *The News*) fought gallantly against such attempts to rein them in, and continued to publish, *albeit in guerilla mode*,

throughout the entire period of military rule in Nigeria. Indeed, these news magazines soon gained so much in credibility among the mass population of Nigeria that they became the *de facto* authoritative sources of information for most Nigerians, and saw their circulation and profits soar exponentially. They still profit from the fruits of their courage.

Part of the explanation for their success in maintaining their operations was their membership of the virtual network that was formed around the locus of the African system by activist elements in Nigeria. Independent Nigerian journalists took an active role in affording wide publicity to the work of other activists that involved the deployment of the African system. They themselves benefited tremendously (in terms of the ideological orientation and legitimisation that was afforded them) from their relatively constant contact or interaction with the African system, or with the activists that deployed that system *within* Nigeria's legal order. The system's views reinforced their own sense of 'appropriateness'. It also helped to reinforce a similar sense of appropriateness within the larger public, one that motivated a significant chunk of that population to support and encourage the activist press. The Nigerian public voted very clearly with their money, and sustained these activist publications throughout the duration of military rule in Nigeria.¹⁰⁸

As importantly, the African system proved to be a key resource for the legal and political struggles waged by the activist press within Nigeria. It was a vital line of defence that, while not always effective, often worked in significant ways. The African Commission issued a number of decisions that were well publicised in Nigeria and which offered much-needed normative justification and additional legitimisation to these activist journalists as they risked their lives, families, livelihoods and financial investments in

their battle against military dictatorship in Nigeria. For instance, in Communication No.102/ 93,¹⁰⁹ the African Commission declared that: ‘The proscription of ‘The News’ [an activist magazine] thus constitutes a violation of Article 9 [African Charter]. Equally, the seizure of 50,000 copies of ‘Tempo’ and ‘The News’ Magazine [is not] justified in the face of Article 9 of the Charter’ .¹¹⁰ Similar decisions were reached by the Commission in Communication 152/96; Communication 128/94; Communication 224/98 (the Niran Malolu Case¹¹¹). Even more remarkably, as noted already in the previous discussion of the *Newspaper Registration Decree case*, the African Commission played a key role in providing the normative justification and basis for the concurring decision of a Nigerian court, as well as in the massive public awareness campaigns that ensured that a very draconian anti-press law was never enforced, and was in fact repealed eventually.

The foregoing paragraphs have shown that the African system has had both direct and indirect influence on the work of popular forces, as well as on the attitudes of the public within Nigeria. It has done so mostly by consciously producing and affirming resources that were then deployed domestically by popular forces. In the following section, I will offer a couple of examples of the indications of the modest but significant influence that the African system has also exerted within other African states apart from Nigeria. This will serve to highlight the potential generalisability within Africa of the broad arguments advanced, and suggestions made, in this article.

Indications of the African System’s Influence within other African States

Here, I utilise examples from three countries in order to illustrate my point.

The Cases from Botswana: In the now famous decision in *Attorney General of Botswana v Unity Dow*,¹¹² the Court of Appeal of Botswana struck down a provision of the citizenship law of that country that had in effect discriminated against women. In response to this decision, the government of Botswana eventually moved to amend the citizenship law in issue so as to repeal the offensive provisions.¹¹³ In coming to its decision, the court of Appeal made copious references to the *African Charter* (as well as a couple of other such international instruments). The court felt able to rely on the Charter despite the fact that that treaty had not been incorporated into Botswana's domestic legal order. The court was of the view that since 'Botswana is a signatory' and is 'one of the credible prime movers behind the promotion and supervision of the Charter', domestic legislation in Botswana should be interpreted so as not to conflict with that country's obligations under the Charter.¹¹⁴ The Charter was thus a very important factor that helped to justify, complement and legitimate this court's assault against the legislation and those prevailing norms of Botswana's society that were patriarchal. The Charter, and Botswana's participation at the forefront in the African system, clearly inspired the progressive orientation and tone of this decision. And since the Court of Appeal's decision was eventually reflected in the impugned law, key as it was to the decision, the African Charter cannot but be viewed as having exerted a significant level of influence, albeit indirectly, on both legislative and executive action within Botswana. This indirect influence was exerted on the executive because it was that branch of government that moved to amend the impugned law. This indirect influence was also exerted on the legislature because it agreed to change that law.

Botswana's eventual reaction to a decision of the *African Commission* is as instructive. In

John K. Modise v Botswana,¹¹⁵ the Commission's intervention in the matter of the repeated deportation from 1978 to 1995 of one of the leaders of the opposition in Botswana, on the grounds that he was a South African citizen, led to the concession on the part of the government of a partial remedy for this opposition leader's citizenship problems. The government granted him a form of citizenship (citizenship by registration), which while it was not as ample and beneficial as 'citizenship by birth' to which he seemed to be entitled, it still left him a much better situation than he had been for the previous 17 years. In all those years, he had been forced to live as a stateless person outside Botswana.

The Cases from the Republic of Benin: In the *Developmental Associations case*, the Constitutional Court of Benin struck down a decree made by the Minister of the Interior not merely because it was unconstitutional, but also because it was a violation of the African Charter.¹¹⁶ In the *Madame Bagri case*, the Constitutional Court of Benin applied the African Charter even though it reached the conclusion that the dismissal of the aggrieved party was constitutional.¹¹⁷ As Viljoen has noted,¹¹⁸ the rapidly increasing influence of the African system within Benin's judicial order is also illustrated by the exponential rise in the number of the decisions of that country's Constitutional Court that refer to the African Charter in part in *order to legitimise their conclusions*, as well as by the equally exponential rise in the number of cases in which laws and/or actions were found by this court to be unconstitutional, based in part on the application of the African Charter. Of the four cases that were heard by this court in 1993, none applied the Charter.¹¹⁹ Of the 14 cases that the same court decided in 1994 (the very next year), *seven* applied the African Charter, leading to findings of unconstitutionality in all but one of these seven cases!¹²⁰

A Case from Ghana: In *New Patriotic Party v IGP, Accra*, a judge of the Supreme Court of Ghana relied in part on the African Charter when it struck down the Ghana Public Order Decree of 1972.¹²¹ Archer, C.J. underscored the important role played by the African system in the court's decision-making process when he stated that:

Ghana is a signatory of this African Charter and Member States of the Organisation of African Unity and parties to the Charter are expected to recognize the rights, duties and freedoms enshrined in the charter and to undertake to adopt legislative and other measures to give effect to the rights and duties. I do not think the fact that Ghana has not passed specific legislation to give effect to the Charter, [means] the Charter cannot be relied upon. On the contrary, Article 21 of our Constitution has recognised the right to assembly mentioned in article 11 of the African Charter.¹²²

In this way was the African system relevant to judicial action in this case.

The sample evidence discussed above clearly indicates that to an extent that I consider significant in the light the historical context, the African system has had an appreciable impact on judicial thought and action within a number of other African states apart from Nigeria. This impact has manifested itself in the incidences of 'correspondence' between domestic judicial, legislative and executive action within these states (on the one hand) and the norms and goals of the African system (on the other hand).

Centering the Generation of 'Correspondence' in the Evaluation of the Domestic Impact of IHIs¹²³

The fact that, to date, the kinds of stories that have been told here relating to the African system's ability (without directly compelling or cajoling 'compliance') to generate

different kinds of ‘constructivist-type’ influence within Nigeria and a couple of other African states actors have, for the most part, not been told or told in any significant detail by observers of the African system is testimony to the extent to which the described phenomenon, what I have styled ‘correspondence’ , has been largely beyond the radar of the conventional paradigm for assessing the domestic effect and impact of IHIs.¹²⁴ I am of course aware of a short reference to the Zamani Lekwot case in a recent paper by Chidi Odinkalu, himself a widely acknowledged authority on the African system.¹²⁵ But as brilliant as this paper is, it does not deal with the phenomena discussed here either in any detail or in the same way. Like this author, Odinkalu is, however, quite appreciative of the fact that the conventional paradigm for evaluating the performance of the African system is inadequate.

This conceptual and practical inadequacy is mostly due to the fact that paradigm does not, for the most part, take into account the various creative ways in which local popular forces (including human rights NGOs and other non-state actors) deploy and employ these IHIs within states. To the results of the measure of ‘what these institutions can do *to* or *for* local popular forces?’ the more holistic paradigm that I envisage would add the results of the additional measure of ‘what can be done *with* these IHIs by the popular forces that operate within states?’ Both types of ‘measures’ , not merely the latter, must be in place if we are to obtain a holistic and thus more complete picture of the performance of any such institution. From the above analysis, it is pretty clear to me that, when creatively utilised, even an IHI that is generally assessed as weak (especially when viewed from a compliance-centred perspective) can still help make a significant difference within states. At the very least, it is clear to me from my research so far that because of the hard work and creativity of Nigerian and other African popular forces (mostly led

by local human rights NGOs), the African system has begun to help make a difference within Nigeria and some other African states. And while the dividends that have been yielded have been quite modest so far, they have at the same time been significant.

Thus, as the discussions in previous sections of this article suggest, when IHIs (such as the African system) have mattered to the lives of ordinary people, it is not been *principally* because of some kind of *autonomous* ability to *coercively* compel the obedience of states and other relevant actors, or because of an ability a similar capacity to generate the *voluntary compliance* of these actors, but *primarily* because of their *mediated* capacity to help foster eventual transformations in the self-understandings and conceptions of interest held by key domestic institutions, thereby influencing significantly the particular society's sense of 'appropriateness.' This is an argument that is broadly 'constructivist' in nature.¹²⁶ The same argument suggests that centring the generation of 'correspondence' by IHIs (such as the African system) is a better way of realistically evaluating and understanding the full extent and significance of their broader effects *within* states. In the case of the African system, its ability to generate 'correspondence' within Nigeria has been most remarkable because it has translated into what I have referred to as the 'ACHPR phenomenon' .

For the sake of clarity, it is important to re-articulate what is meant by this last phrase.¹²⁷ The 'ACHPR phenomenon' stands for the following: the deployment of a norm, value or decision issuing from within the African system by a range of popular forces *within* a state party (sometimes governed by a dictatorial military regime) in a way that more or less results in a desired progressive outcome (without the state party responding necessarily to any direct 'order' or 'recommendation' of the African system).

As has already been suggested in the first section, the existence and nature of this phenomenon poses a significant problem for much IHI theory and conceptual writing. This is largely because, so far at least, most of the theories of IHIs (already canvassed in that section) do not offer an adequate explanation for the *mediated ability* of the African system to, in virtual alliance with popular forces, exert influence outside the compliance framework, and foster such significant if modest levels of generally non-coerced and non-cajoled influence within Nigeria.

As has also been noted previously, the ACHPR phenomenon provides yet another indication of the broadly explanatory power and importance of constructivism with regard to our understanding of the nature, work and the value of IHIs. This does not mean, however, that the conventional version of constructivism totally and completely explains the ACHPR Phenomenon. What is meant is that the broadly constructivist (read quasi-constructivist) paradigm *comes the closest* to offering a convincing explanation of how such a ‘weak’ IHI can, mostly without coercing or cajoling, exert such a significant influence within a state party that was governed during the relevant period by a dictatorial military regime.

Regrettably therefore, as has been argued already, while the quasi-constructivists (who are still largely constructivist in approach) have offered an approach that comes extremely close, none of the theories of international institutions has adequately explained the ACHPR phenomenon. For one, the idea that the African system has had, and can have, a modest but significant impact within a relatively powerful dictatorial state (as Nigeria was at the relevant period) would, at least at first thought, be ‘shocking’ to many commentators in this area. The literature widely regards the African system as the weakest of the weak, the most problematic of all the IHIs (that is, when it is assessed

against the conventional compliance-centric barometers for assessing IHI effectiveness). Moreover, the system's most significant influence seems to have been within Nigeria, one of the two most powerful and most influential states in Africa! Of even more significance is the fact that Nigeria was controlled by a dictatorial regime during the first 12 of the 14-year period in which this phenomenon was observed (1987 – 2001).

Realists and neo-realists, who are convinced that international institutions such as IHIs can only be *consequential* when and only when powerful states work to enforce institutional principles and norms, are farthest from offering an adequate explanation for the ACHPR phenomenon. A realist would expect to find that the African system was able to exert influence within Nigeria because of the supportive assertiveness of a regional hegemon or the supportive projection of power by a number of strong states. In fact, in view of the evidence so far available to us, it seems like the African system has been able to exert the most influence within Nigeria, *the state that could be best described as the regional* hegemon. The African system was able to exert influence within this state not because of the projection of power by a strong state or a group of strong states (Nigeria is widely regarded as one of the two most powerful African states), but mostly *in spite* of the power projected by Nigeria. South Africa, the only other regional power that could have exerted any appreciable amount of influence on or within Nigeria was not even a participant in the African system until the year 2000 or so. Moreover, the influence of strong states located outside the African continent was never directed at getting Nigeria to comply with the decisions issued from within the African system.

The neo-liberal approach also does not adequately explain the ACHPR phenomenon. A neo-liberal would expect to find an effective or influential African system only when a

group of states find that it is in their rational self-interest to foster such a system. In fact, for most of this period most African governments explicitly regarded the African system's work as against their rational self-interest. This notion of self-interest is in fact one of the things that the African system has helped to re-shape, albeit with modest results. In the context of Nigeria, the dictatorial military regime that ruled Nigeria for all but two of the relevant years clearly regarded the African system and its work as directed against their self-interest. As such, no institutional convergence of the perceived self-interests of a number of rational egotistic state actors could have occurred.

The quasi-constructivists and the republican liberals (in that order) come the closest to offering such an explanation, but even their respective approaches remain inadequate to varying degrees. The republican liberal approach is much more inadequate (at least in the present context) than the quasi-constructivist take. What I want to do now is to concentrate on the inadequacy of the theoretical explanations of the *republican liberals* and the existing *quasi-constructivists*: the two theoretical approaches that stand any chance of explaining adequately the 'ACHPR phenomenon'. I have (in chapter two of my forthcoming book) discussed at some length the relevant major positions of these two 'schools'.

The major reason why the republican liberals thesis does not adequately explain the ACHPR phenomenon is that it seems only designed to explain the impact of an IHI *within already (if newly/weakly) democratised* states. As such republican liberals do not really have any plausible explanation for significant IHI impact within a *dictatorship*. They do in fact recognise that such an impact is possible but have not to this writer's knowledge grappled with this matter effectively. One possible reason for this is that none of these scholars would seem to expect to see any significant exertion of influence

by a weak institution such as the African system within a dictatorial state such as Nigeria of the relevant era. A related reason is the near confinement of the empirical ‘data’ on which their theoretical explanations are based to the European context.

Another reason is their focus on the perceived high rate of state compliance with the European system as *the key* indicator of that system’s worth. These theorists do not seem to notice, and certainly have not theorised, the possibility of highly significant

‘correspondence’ (attributable to the work of IHIs) occurring outside the compliance-centred optic. Thus, focused as they are on ‘compliance’, and oblivious as they seem to be of these kinds of valuable ‘correspondence’, it is not surprising that their approach founders to a significant degree when tested against the ACHPR phenomenon. During most of the relevant period, very few states parties to the African system were ‘liberal democracies’ in the sense in which most European states are so viewed. As such, republican liberals, who do not expect to find effective IHIs in situations where a critical mass of newer or weaker liberal democracies do not already exist, would not ordinarily expect to find that the African system has exerted a significant level of influence within Nigeria. It is principally for these reasons that I conclude that, important as it is, the republican liberal approach, symbolised by the work of Andrew Moravcsik,¹²⁸ is incapable of explaining adequately the ACHPR phenomenon.

Some conventional forms of constructivism do come very close to offering convincing explanations of this phenomenon. However, the tendency of some constructivists to treat states as unitary actors, and their historical reluctance to treat these states as dis-aggregated units has meant that scholars of this ilk have too often not paid sufficient attention to the role that sub-state actors such as domestic popular forces and other ‘principled issue networks’ have played in ensuring IHI effectiveness. Hence, it is fair to state that one of

the major contributions that quasi-constructivists have made to the constructivist approach is to account more fully for the role of domestic popular forces and other such sub-state actors in the functional successes of IHIs. Another related reason for the inability of conventional constructivism to fully explain the ACHPR phenomenon is its historical tendency *not to specify exactly how* norms and ideas work to influence thinking and behaviour within states. And yet, such a specification is important for explaining the specific narratives that constitute the ACHPR phenomenon. *Nevertheless, the explanation for the ACHPR phenomenon that I have offered here is still largely steeped in the broadly constructivist paradigm idiom and framework. It is not at all anti-constructivism.*

However, though quasi-constructivism is much more adequate in the present connection, it is still not completely explanatory of the extant phenomenon. The quasi-constructivist approach is unable to explain the ACHPR phenomenon as adequately as it could mostly because of the following reasons. Firstly, quasi-constructivists tend to *stress too much* the leadership of the critical ‘issue networks’ or ‘advocacy networks’ by foreign (or so-called ‘international’) NGOs.¹²⁹ While they regard local NGOs as important, they still place far too much emphasis on what foreign agents can do *for* local NGOs and other popular forces. The extent to which many quasi-constructivists emphasise the foreign element is, in the case of the ACHPR phenomenon at least, not supported by the bulk of the evidence. This level of stress is not explanatory in the Nigerian case. There is very little evidence to suggest that international human rights NGOs have paid more attention to Nigeria than they did to other African states. There is very little evidence as well to suggest that it was *primarily* because international human rights NGOs and charities paid more attention to Nigeria than they did to other

African countries that Nigerian popular forces became so creative in deploying the African system within the country's institutions, and have now out-paced the local NGOs in other African countries by far.¹³⁰ Secondly, quasi-constructivists also *stress too much* the role played by the *coercive* pressure that is often brought to bear on recalcitrant states in bringing about the transformation of thinking and practice within these of states.¹³¹ This is not explanatory of the process by which the African system has been able to exert modest but highly significant levels of influence within African states. The African system is not legally empowered, and not physically able, to exert coercive pressure on African states. Also, in none of the scenarios described above was coercive pressure *decisive*. Most of the valuable 'correspondence' that was observable was generated with little explicit resort to *coercive* pressures, and occurred outside the compliance framework. These are the two major problems with the quasi-constructivist approach as an adequate explanation of the ACHPR phenomenon.

However, their often implied contention that in the processes through which IHIs exert influence domestically, relevant actors are seen to make detailed *end-means calculations* is supported by the evidence of the ACHPR phenomenon. That contention is thus partially explanatory of the conduct of certain key agents that helped foster the Nigerian transformation (such as activist judges, activist local NGOs, activist lawyers and activist journalists). For instance, in the *Zamani Lekwot case*, a local NGO (the Constitutional Rights project (CRP)), made a detailed end-means calculation that if it could secure an indication of interim measures from the African Commission, and widely publicise that decision, it might be able to secure an injunction from a local court in Nigeria ordering the government to stay the executions of General Lekwot et al. This injunction would not have been otherwise obtainable because the jurisdiction of local

courts to review the death sentences had been ousted already by a military decree. This strategy worked quite well. In the same way, the activist judge, Onalaja J., calculated that he could safely rely on the indication of interim measures cited to him in court by counsel for the CRP, and that he could 'legally' subvert the logic of the ouster clause, thereby assuming jurisdiction over the matter in a manner that did not appear too partisan or political. Activist journalists also calculated, quite correctly as it turned out, that if they gave the ruling wide publicity, and given the play of politics at the time, the then ruling military junta might feel sufficient moral and cultural pressure as to refrain from approving the death warrants of the condemned persons. In fact, the ruling military junta eventually commuted the death sentences to five-year terms. In each case, the work of the African system was crucial in providing the normative influence on the popular forces, the courts and the military regime that eventually led to the reprieve. In the process, the prevalent understanding of the extent to which the military could subvert the human rights of citizens through the prevalent strategy of inserting 'ouster clauses' in its decrees was challenged, and the process of its de-legitimisation and eventual reformulation was prodded on to a significant extent. By not executing General Lekwot et al., and eventually releasing them from jail before the expiry of the term of years to which they had been sentenced, the military junta that ruled Nigeria was in fact acknowledging impliedly that the ouster of the court's jurisdiction, which had been justified impliedly as an act that had been done in the interest of national security¹³² [because the condemned persons had supposedly participated in the mass murder of 'settler' ethnic Hausa-Fulani persons during a communal disturbance in Kaduna state of Nigeria],¹³³ was not such a serious national security matter as to justify the ousting of the court's jurisdiction. Had they felt it necessary, they would have, as they have

done on many occasions, issued a decree annulling the court' s order.¹³⁴ They did no such thing.

Quasi-constructivism is also explanatory in this case in another sense. As a largely constructivist approach, it accepts the notion, so fundamental to the latter 'school' , that ideas, norms and knowledge play a fundamental role in international politics and in the exertion of influence by IHIs *within* domestic settings. The ACHPR phenomenon is in fact evidence for the proposition that ideas, norms and knowledge (non-material factors) do play a fundamental role in the exertion of influence by IHIs *within* states. In all of the examples that I offered in the third section, the ideational, normative, and epistemic influences of the African system and its virtual network partners are palpable. For instance, the African Commission' s negative views as to the *appropriateness* of issues such as ouster clauses, military rule, the closure of newspaper houses on security grounds, the arbitrary arrest of activists, and the status of the charter within the legal orders of states parties have on occasion been directly or indirectly influential within the domestic political and judicial institutions of certain African states. Much of this is evident from the third section above.

Thus, *with the two caveats already entered*, it is my considered view that (in relative terms) the best theoretical framework for explaining the ACHPR phenomenon is the quasi-constructivist one. With less stress on the leadership roles of so-called 'international (read western) NGOs' , and on the role of *coercive* pressure, this theoretical approach seems to explain reasonably adequately the evidence that I have collectively referred to in this article as constitutive of the ACHPR phenomenon.

This preferred explanation is that the African system was, in alliance with popular

forces that operate domestically, able to produce a significant and valuable level of

‘correspondence’ between its norms and decisions (on one hand) and the thought and action of certain key institutions within certain African states (mostly outside the

‘compliance’ framework). This correspondence was produced not *primarily* because of its ability to compel state compliance, or to generate the voluntary compliance of states parties, but *principally* because of its capacity to contribute significantly to a process of (small ‘i’) ideological transformation within certain of the key institutions that constitute states parties. It has *helped* foster modest but highly significant changes in how key domestic institutions think and act about key notions or aspects of governance. This is the most viable way to think about and understand the African system. It is also, in my view, likely to be the most viable way of imagining the work of IHIs more generally.

The question that then arises is: if the African system possesses this kind of mediated ‘constructivist-type’ capacity to make a modest difference within states, this ability to generate valuable ‘correspondence’ even within a state that is governed by those viewed as dictatorial forces, can that system be deployed with profit toward enhancing efforts at peacebuilding within specific deeply fragmented African states? This will form the subject of discussion in the next section.

Harnessing the African System and the ‘ACHPR Phenomenon’ for Peacebuilding within African States

It is now well established that the restiveness of the sub-state groups that constitute postcolonial African states have deeply fragmented these states.¹³⁵ It is also fairly clear that one of the most important challenges to peacebuilding on the African continent

has been the deeply fragmented nature of the societies that constitute these states,¹³⁶ and the corresponding lack of effective arrangements and *credible* fora for the accommodation of the fears and interests of relevant sub-state groups vis-à-vis the states of which they are a part.¹³⁷ As such, it is only reasonable to deduce that peacebuilding thinking and action in many parts of Africa has been significantly challenged and hindered by the failure to address effectively the question of this kind of deep fragmentation – a phenomenon that is at the root of far too many intra-state conflicts in Africa.¹³⁸ For, if the deepest fears and concerns of relevant sub-state groups regarding the structural and distributive fairness of their relationships with each other, and with their englobing state, is left largely unresolved at the end of one conflict, these fears and concerns will be sure to spawn further rounds of violence.¹³⁹

Until very recently, there had been very few *inter*-state wars in post-colonial Africa.¹⁴⁰ Even today, the vast majority of the violent conflicts that occur on the African continent are *intra*-state (rather than *inter*-state) in nature.¹⁴¹ This remarkable situation has been attributed to the 1964 adoption of the *uti possidetis* principle by the Organization of African Unity (OAU).¹⁴² This principle affirms the sanctity of the territorial borders among the newly de-colonised African states. By adopting this principle, the OAU sought to secure the freedom of the newly de-colonised African states, a situation that could have been jeopardised by the massive inter-state tensions that could have resulted from a wholesale re-configuration of international borders on the continent. While the OAU has, relatively speaking, been quite successful in achieving that specific objective, their strict adherence to the *uti possidetis* principle did not really prevent all kinds of violent conflicts on the continent. As is common knowledge, far too many *intra*-state

conflicts have occurred on the continent. This relative prevalence on the continent of conflicts that occur within, rather than across, international frontiers has, in part at least, been attributed to the extreme restiveness of the sub-state groups that are englobed by Africa' s international borders. It is this same restiveness that has deeply fragmented most African states. This is not surprising, given the coercive character of nineteenth – twentieth century history of state-building in Africa.¹⁴³ For, were not post-colonial African states forcibly contrived by external colonial powers over so short a period, and with very little time to 'age in the wood' ?¹⁴⁴ Were not these sub-state groups herded into these newly constructed states largely against their will?¹⁴⁵ Did not the colonial African state lack so much in internal legitimacy? Was not the post-colonial African state its uncritical successor?¹⁴⁶

Given this deeply fragmented nature of the post-colonial African state, it is not at all surprising that most of these states are host to multitudes of aggrieved and discontented sub-state groups. What is somewhat surprising is that in view of the centrality of this problem to the very survival of many African states, it has not been addressed much more effectively by state-builders in Africa. Past efforts at addressing this serious problem have largely been half-hearted at best, and dismissive of the problem at worst. Similarly, this structural affliction of the post-colonial African state has not received as adequate a treatment as it deserves in the burgeoning contemporary peacebuilding literature. It has not been as widely recognised as it should be in that body of literature that, in the long term, there can be no truly successful peacebuilding within many post-colonial African states as long as the deepest structural fears and concerns of aggrieved substate groups are not effectively addressed. These groups are after all the building blocks of the post-colonial African state.

Much more effective third-party mechanisms, that are not completely dominated by the very states that stand indicted by these groups, need to be constructed if these structural fears and concerns are to be re-directed from their frustrated expression in violent gestures and activity, toward their ventilation and expression in more peaceable ways. The reason that these mechanisms can no longer be *exclusively* domestic in character is that, all too often, the state itself and its judicial institutions are themselves implicated in either the repression of these aggrieved groups, or in the unfair treatment complained of. Thus, to install the relevant state or its judicial institution as the *exclusive* arbiter of the grievances of its sub-state groups is to ensure that the very arbitral process will likely be viewed as lacking in credibility by the very sub-state groups whose concerns are to be addressed. This is the reason for some kind of ‘third party’ or ‘external’ participation in the process. But ‘third party’ or ‘external’ does not always have to signify ‘non-African’ . On the one hand, the immune reaction of many African societies to international intervention is now well documented.¹⁴⁷ On the other hand, multilateral intervention by inter-African bodies is often better received.¹⁴⁸ As such, much more credible inter-African institutions must have an important role to play in any efforts to provide alternative normative energies, process and argumentative resources that significantly expand the capacity of aggrieved sub-state groups to ventilate and seek redress in more peaceable ways.

One such relatively more credible inter-African institution is the African system for the protection of human and peoples’ rights. That system, especially one of its key institutions – the African Commission on Human and Peoples’ Rights – could serve as a very useful resource in the process of peacebuilding within many African states. I have already argued in the third section of this article that despite its many

problems, this body remains very relevant as a crucial resource for human rights and other state-building work in Africa. Even though it has not itself done nearly as much as it ought to, and even though it has not, and never will, attain a status similar to the fabled Delphic oracle, a lot has been done *with* it within the domestic order of Nigeria and a few other African states.

And a lot can still be done with it there and elsewhere. If strengthened, the African Commission can provide a relatively more credible third-party forum where oppressed or aggrieved groups can seek redress without resorting to expressive violence (an action taken in order to secure serious attention to their often deeply felt grievances).¹⁴⁹ The African Commission would thus provide a credible third party alternative to the arbitration of these grievances within the domestic judicial orders of affected African states. This is not to say that the domestic systems of such states should no longer deal with such grievances. Jennifer Widner has, for instance, noted the important, if limited, roles that domestic judicial institutions can sometimes play in peacebuilding within African states.¹⁵⁰ *The point is that these groups ought to have a more credible alternative in the not unlikely event that they (with good reasons) perceive domestic institutions as biased and lacking in credibility.* This form of third party arbitration will also provide a certain amount of much needed strategic space within which these aggrieved sub-state groups (and other concerned popular forces) can creatively mobilise with profit. This rather optimistic view of the capacity of the African system to lend itself to the amelioration of internal state-building (and therefore peacebuilding) problems within some African countries is not speculative, for the most part. For as was demonstrated by the discussion in the third section above of the

Zamani Lekwot case, a Nigerian human rights NGO was able to use the African Commission and Charter in creative ways in order to secure the *lives* and *freedoms* of seven top leaders of the Kataf minority sub-state group of Nigeria. These leaders might have been executed but for the interim measures indicated by the African Commission and the other resources that were mobilised by this NGO. Had these leaders been executed, the already deep-seated resentment of the Nigerian state widely held among Nigeria's minority groups might have been greatly exacerbated.¹⁵¹ And given the relevant ethnic group's history of agitation against the Nigerian state, that situation could have ultimately led to continuing, if localised, civil disturbances in that volatile part of Nigeria.¹⁵²

Another way in which the African Commission can contribute to the amelioration of the restiveness of sub-state groups within many African states – a desideratum for successful peacebuilding within the affected states – is through its efforts to generate normative reasoning that can help, directly or indirectly, to configure the human rights environment within these states, and even affect the nature of the process of re-configuring the relationships among such groups and their states. Such normative reasoning can often be mobilised with profit within domestic courts and other fora. This was the case in the *Zamani Lekwot Case* (where the African Commission insisted on due process been followed in the trial of some leaders of the Kataf people), and in the *Newspapers Registration Case* (where the African Commission insisted on the necessity for a free press in Nigeria and suggested the repealing of an offensive press law). In the first case, popular forces were able to mobilise the courts, the press and sections of the general population using the African Commission's decisions as legitimating and empowering normative value. In the second case, popular forces were also able to

mobilise important institutions and segments of Nigerian society using the African Commission' s decision as a legitimating and empowering normative text. In view of the crucial role that the vibrant independent press has played in raising consciousness about the grievances of that country' s sub-state groups, and in campaigning on behalf of their leaders, this last case is particularly instructive as to the role that the African system has played in the construction of a more conducive environment for the amelioration of the grievances of sub-state groups in Nigeria. However, important as the foregoing examples are, the normative logic of the African Commission in its landmark decision in the *Katanga Case* is much more directly related to the 'national question' that continues to challenge many African states.¹⁵³

There, the African Commission held that an oppressed sub-state group had a right to secede from its englobing state if it could show that the treatment meted out to members of the group by the relevant state is so intolerable as to justify such a radical measure, and that secession was the only real way to protect them from that state in the longer term. This decision has important implications for the relationships among states and their sub-state groups on the African continent. No longer can an African state deal ruthlessly and oppressively with a sub-state group and yet demand that such a group retain its membership in that state. The clear message that was sent out by the African Commission is that if a state wants normative or legitimating support in an effort to maintain its continued integral existence, then it must find relatively non-forcible and nonoppressive ways of retaining the loyalty of its sub-state groups.

Yet another possible, and indeed probable, contribution of the African system to longterm peacebuilding within African states could be its function as a general resource

for all kinds of work by popular forces (including human rights NGOs) within these states. In Nigeria, the African system has been an important institutional and normative resource for popular forces, even in the darkest months of the long years of military rule. This much is evident from the discussion in the third section of this article. They enabled creative and novel arguments to be urged in ways that would have been otherwise impossible – a ‘value-added’ function. They made a significant difference indeed. In this way did this institution contribute significantly to the struggle to foster a more deeply embedded and sustainable culture of constraint within domestic state institutions. Fostering such a culture of constraint is crucial if aggrieved sub-state groups (especially power minorities) are to begin to view local judicial mechanisms as credible and capable of addressing their fears and concerns. This is of course a long-term view of things. But it is my considered view that effective peacebuilding in Africa cannot but include a long-term perspective if we are to address the cyclical periodic flashes of violence that characterise many African states. Clearly such cyclical outbreaks of violent conflict reflect a deeper and more rooted malaise.

Summarising the Implied Recommendations and a Future Research Agenda

Implied in the discussions and analysis conducted in the previous sections of this article are six recommendations for future action.

1. That quasi-constructivism apart, pre-existing theories of, and frameworks for understanding, IHIs (like the African system) need varying levels and various kinds of re-orientation and enlargement in order to capture the myriad ways, that lie outside the compliance-centred radar/optic, in which IHIs can matter within domestic

socio-political and legal orders. A more holistic paradigm is needed for evaluating IHIIs if we are not to miss out on important phenomena such as (a) the ‘correspondence’ that is fostered by IHIIs in *virtual network alliance* with domestic popular forces – and outside the compliance-centred radar, and (b) the generation of such ‘correspondence’ within a state that was widely regarded as governed by dictatorial forces during the relevant period by an IHI that is viewed as weak (the ACHPR phenomenon).

Observers of the African system need to begin to apply more seriously this kind of enlarged paradigm and optic if they are to render more adequate accounts of both the possibilities and impossibilities that lie within that system.

2. That more attention be paid by peacebuilding theorists and practitioners to the fundamental structural problems that confront African states, especially the restiveness of the building blocks that make up these states. More attention needs to be paid to addressing their fears and concerns, and loosening up the stranglehold of many states on their sub-state groups. Alternatives to violence need to be harnessed (if already existing), and put in place (if non-existent). Without this happening, peacebuilding efforts in Africa shall remain ever so structurally challenged. More such attention also needs to be paid to the various creative ways in which popular forces might deploy the African system’s mediated capacity to generate ‘correspondence’ in ways that serve peacebuilding thought and action in Africa.
3. The African system needs to be greatly strengthened to continue to act as it has as a resource for the work that popular forces do in Africa. It should be made even more active, more widely understood, and much more financially viable if a lot more can be done with it in a lot more countries.
4. States should be encouraged to incorporate the African Charter as part of their domestic

law. This is not simply a mere formalist concern. Without the incorporation of this Charter in 1983 as an integral part of Nigerian law, the African system would not have had as much impact within Nigeria. For one, it would not be as widely noticed as it has been. More importantly perhaps, it would have been far more difficult to convince judges and bureaucrats to regard it as normative within Nigeria' s socio-legal order. It would have been too easily dismissed as largely irrelevant to the workings of Nigeria' s domestic legal order.

5. Local popular forces (including many human rights NGOs) need to be greatly strengthened and supported. Without the courage, ingenuity, hard work and dedication of many such groups, the African system would not have had much of an impact within Nigeria (and most likely within other African states).
6. A *Special Commission on National Minorities* needs to be established by the OAU (now known as the African Union). This special commission is necessary to draw much more attention to 'the national question' (the question of relatively deep state fragmentation) as perhaps one of the most important of the root causes of conflict in Africa. The special commission is also needed because it is necessary to have a highly specialised body composed of about three to five relatively detached and eminent persons who can work from day to day on this question, seeking locally viable solutions, harnessing scarce resources, exerting much needed influence, addressing the pertinent concerns of many sub-state groups, and monitoring many delicate situations that seem likely to spiral into violence.

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Notes

¹Hereinafter referred to as 'the African system'.

²This concept will be explained in more detail in subsequent sections of this article.

³For a much more detailed explanation of this concept, see the third section of this article.

⁴It is important to emphasise once again that, like Hasenclever et al., I use the expression 'schools of thought' as 'intellectual, not sociological, entities'. It refers to 'ideas ... rather than people'. See A. Hasenclever, P. Mayer and V. Rittberger, *Theories of International Regimes* (Cambridge: Cambridge University Press, 1997), p.6 (hereinafter referred to as *Theories*).

⁵Here, I have paraphrased a similar expression used by Makau Mutua in his review of Shand Watson's critique of IHIs. See M. Mutua, 'Book Review', *American Journal of International Law*, Vol.95 (2001), p.225. See also S.J. Watson, *Theory and Reality in the International Protection of Human Rights* (New York: Transnational, 1999).

⁶For example, see T.M. Franck, *The Power of Legitimacy Among Nations* (New York: Oxford University Press, 1990).

⁷Put differently, virtually all of these approaches to share a common tendency to almost always imagine IHIs in terms of what IHIs can do for the oppressed (or popular forces), and not what the oppressed (or popular forces) can do *with* these IHIs (both in the sense of using them as resources and working with them as partners).

⁸See D.E. Mazurana and S.R. McKay, *Women and Peacebuilding* (Montreal: International Centre for Human Rights and Democratic Development, 1999), p.7. For a more contemporary version of Glatung's work in this area, see also J. Galtung and C.G. Jacobsen, *Searching for Peace: The Road to Transcend* (London: Pluto Press, 2000). For more of the burgeoning peacebuilding literature, see S.H. Barnes, 'The Contribution of Democracy to Rebuilding Postconflict Societies', *American Journal of International Law*, Vol.95 (2001), p.86; J. Widner, 'Courts and Democracy in Postconflict Transitions: A Social Scientist's Perspective on the African Case', *American Journal of International Law*, Vol.95 (2001), p.64; and J. Linarelli, 'Peacebuilding', *Denver Journal of International Law and Policy*, Vol.24 (1996), p.253.

⁹See D.E. Mazurana and S.R. McKay (note 8), p.6.

¹⁰See S.H. Barnes (note 8) p.86.

¹¹*Ibid.*

¹²See R.O. Keohane, 'International Institutions: Two Approaches', *International Studies Quarterly*, Vol.32 (1988), p.379. For another use of this same typology, see M. Barnett, 'Institutions, Roles, and Disorder: The Case of the Arab States System', *International Studies Quarterly*, Vol.37 (1993), pp.271 – 5.

¹³See R.O. Keohane, *ibid.*, p.381.

¹⁴See A. Hasenclever et al., *Theories* (note 4), p.23.

¹⁵See R.O. Keohane (note 12), p.380.

¹⁶See E.B. Haas, 'Words Can Hurt You; Or, Who Said What to Whom About Regimes', *International Organization*, Vol.36, No.2 (1982), p.207; J.G. Ruggie, 'Global Governance.net: The Global Compact as Learning Network', *Global Governance*, Vol.7 (2001), p.371; J.G. Ruggie, 'International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar economic Order', *International Organization*, Vol.36 (1982), p.379; P.M. Haas, 'UN Conferences and Constructivist Governance of the Environment', *Global Governance*, Vol.8 (2002), p.73; P.M. Haas, 'Do Regimes Matter? Epistemic Communities and Mediterranean Pollution Control', *International Organization*, Vol.43 (1989), p.377. A. Wendt, 'Constructing International Politics', *International Security*, Vol.20 (1995), p.71.

¹⁷See R. Ashley, 'The Poverty of Neorealism', *International Organization*, Vol.38 (1984), p.225, and R.B.J. Walker, *Inside/Outside: International Relations as Political Theory* (Cambridge: Cambridge University Press, 1993).

¹⁸See V.S. Peterson, 'Rereading the Public and Private: The Dichotomy that is not One', *SAIS Review* (2000), p.11; S. Mazey, 'The European Union and Women's Rights: From the Europeanization of National Agendas to the Nationalization of a European Agenda', *Journal of European Public Policy*, Vol.5 (1998), p.131; and C. Sylvester, 'Empathetic Cooperation: A Feminist Method for IR', *Millennium*, Vol.23 (1994), p.315.

¹⁹See R.W. Cox, 'Gramsci, Hegemony, and International Relations: An Essay in Method', *Millennium*, Vol.12 (1983), p.162; R.W. Cox, 'Civil Society at the Turn of the Millennium: Prospects for an alternative World Order', *Review of International Studies*, Vol.25 (1999), p.3; R.W. Cox, 'The Crisis in World Order and the Challenge to International Organization', *Cooperation and Conflict*, Vol.29 (1994), p.99; and S. Gill, 'Reflections on Global Order and Socio-Historical Time', *Alternatives*, Vol.16 (1991), p.275.

²⁰See A. Hasenclever et al. (note 4), p.136.

²¹*Ibid.*

²²A. Hasenclever et al., 'Integrating Theories of International Regimes', *Review of International Studies*, Vol.26, No.1 (2000), pp.3 – 5 (hereinafter referred to as 'Integrating').

²³See A. Hasenclever et al., *Theories* (note 4), p.6.

²⁴I borrow some of the expressions I use to describe the various schools from the work of Andrew Moravcsik.

See A. Moravcsik (note 27).

²⁵See A. Slaughter, A.S. Tulumello and S. Wood, 'International Law and International Relations Theory: A New Generation of Interdisciplinary Scholarship', *American Journal of International Law*, Vol.92 (1998), pp.367 - 72.

²⁶See J. Donnelly, *Realism and International Relations* (Cambridge: Cambridge University Press, 2000); J. Mearsheimer, 'The False Promise of International Institutions', *International Security*, Vol.19, No.3 (1994), p.5; and K. Waltz, *Theory of International Politics* (New York: Random House, 1979). For an extended critique of this 'school' see, R. Ashley, 'The Poverty of Neorealism', *International Organization*, Vol.38 (1984), p.225 (describing neo-realism as 'an orrery of errors').

²⁷For neo-liberal approaches to institutions, see R.O. Keohane and L.L. Martin, 'The Promise of Institutional Theory', *International Security*, Vol.20 (1995), pp.39 - 41; and M.A. Levy et al., 'The Study of International Regimes', *European Journal of International Relations*, Vol.1 (1995), pp.267 - 308 (arguing that the correspondence between state behaviour and a regime is co-determined by interest and power). For a republican liberal approach to institutions, see A. Moravcsik, 'Explaining International Human Rights Regimes: Liberal Theory', *European Journal of International Relations*, Vol.1 (1995), p.157 (hereinafter referred to as 'Explaining'). For constructivist approaches to institutions, see A. Wendt, 'Anarchy is What States Make of it: The Social Construction of Power Politics', *International Organization*, Vol. 46 (1992), (hereinafter referred to as "Anarchy"); A. Wendt, 'Constructing' (note 16); E. Haas, *When Knowledge is Power* (Berkeley: University of California Press 1990); P. Haas, 'Do Regimes Matter? Epistemic Communities and Mediterranean Pollution Control', *International Organization*, Vol.43 (1989), p.377; J.G. Ruggie, 'What Makes the World Hang Together? Neo-Utilitarianism and the Social Constructivist Challenge', *International Organization*, Vol.52 (1998); M. Finnemore, 'International Organizations as Teachers of Norms: The United Nations Educational, Scientific, and Scientific Organization and Science Policy', *International Organization*, Vol.47 (1993). And for a quasi-constructivist approach, see M. Finnemore and K. Sikkink 'International Norm Dynamics and Political Change', *International Organization*, Vol.52 (1998).

²⁸See A. Moravcsik, *ibid.*, p.158.

²⁹*Ibid.*

³⁰See A. Wendt, 'Constructing' (note 27); E. Haas (note 27); P. Haas (note 27), p.377; J.G. Ruggie (note 27), p.855; M. Finnemore (note 27), p.565; A. Wendt, 'Anarchy', p.391; and F. Kratochwil (note 27), p.685.

³¹See M. Finnemore and K. Sikkink, p.887; and perhaps, T. Risse Kappen, 'Ideas Do Not Float Freely: Transnational Coalitions, Domestic Structures, and the End of the Cold War', *International Organization* (1994), p.185.

³²For an early recognition of this fact, see R.O. Keohane, 'International Institutions: Two Approaches', *International Studies Quarterly*, Vol.32 (1988), p.379. For more contemporary recognitions of this fact, see J. Brunnee and S.J. Toope, 'International Law and Constructivism: Elements of an Interactional Theory of International Law', *Columbia Journal of Transnational Law*, Vol.39 (2000), pp.19 - 33; and A. Wendt, 'Constructing' (note 27) p.72.

³³See R.O. Keohane and J. Nye, *Power and Interdependence* (Glensview: Scott Foresman 1989) 2nd edn.; R.O. Keohane and J. Nye, 'Globalization: What's New? What's Not? (And so What?)', *Foreign Policy*, Vol.118 (2000), p.104; A. Chayes and A.H. Chayes, *The New Sovereignty: Compliance with International Regulatory Agreements* (Cambridge, MA: Harvard University Press, 1995); E. Benvenisti, 'Exit and Voice in the Age of Globalization', *Michigan Law Review*, Vol.98 (1999), p.167; and A. Clark, 'Non-Governmental Organizations and their Influence on International Society', *Journal of International Affairs*, Vol.48 (1995), p.507.

³⁴By positivism is meant the position that holds that social conduct is treatable as an object (just like the objects in the natural world) to be observed accurately by human subjectivity. Social conduct is neither produced by discourse nor lies within the discourse. Thus, positivism asserts a radical separation between social conduct, the object, and human subjectivity, the subject. See R. Ashley (note 17) pp.248 - 54.

³⁵See R. Ashley, 'The Poverty of Neorealism', *International Organization*, Vol.38 (1984), pp.225 - 49 fn. 56. See also R.B.J. Walker, *Inside/Outside: International Relations as Political Theory* (Cambridge: Cambridge University Press, 1993).

³⁶On this issue, see J. Brunnee and S. Toope (note 32) pp.36 - 43.

³⁷*Ibid.* pp.21 - 2.

³⁸See H.J. Steiner, 'Individual Claims in a World of Massive Violations: What Role for the Human Rights Committee?' in P. Alston and J. Crawford (eds.), *The Future of United Nations Treaty Monitoring* (Cambridge: Cambridge University Press, 2000), p.15.

³⁹See J.S. Watson, 'Legal Theory, Efficacy and Validity in the Development of Human Rights Norms in International Law', *University of Illinois Law Forum* (1979), p.609.

⁴⁰For instance, see A. Chayes and A.H. Chayes, *The New Sovereignty: Compliance with International Regulatory Agreements* (Cambridge, MA: Harvard University Press, 1995), pp.2 - 3.

⁴¹See L.R. Helfer and A. Slaughter, 'Towards A Theory of Effective Supranational Adjudication', *Yale Law Journal*, Vol.107 (1997), pp.273 - 84.

⁴²J. Donnelly, *International Human Rights* (Boulder: Westview Press, 1993), pp.12, 79, and 83

- ⁴³Ibid., p.86. For a similarly voluntary compliance-based assessment, see J. Donnelly, 'Regime Analysis' (note 26), pp.609 – 10.
- ⁴⁴See D. McGoldrick, *The Human Rights Committee* (Oxford: Oxford University Press, 1994), pp.98 – 104 and 202 – 204.
- ⁴⁵Ibid.
- ⁴⁶For example, see M.E. Keck and K. Sikkink, *Activists Beyond Borders* (Ithaca: Cornell University Press, 1998), pp.1 – 16; and K. Sikkink, 'Codes of Conduct for Transnational Corporations: The Case of the WHO/UNICEF Code', *International Organization*, Vol.40 (1986), p.815.
- ⁴⁷See T. Risse and K. Sikkink, 'The Socialization of International Human Rights Norms into Domestic Politics: An Introduction' in T. Risse, S.C. Ropp and K. Sikkink (eds.), *The Power of Human Rights* (Cambridge: Cambridge University Press, 1999), p.6 (asserting that the book is part of a growing literature on the impact of norms and ideas in international politics).
- ⁴⁸See K. Sikkink, 'Human Rights, Principled Issue-Networks, and Sovereignty in Latin America', *International Organization*, Vol.47, No.3 (1993), pp.412 and 416.
- ⁴⁹See M.E. Keck and K. Sikkink (note 46) pp.16 – 29.
- ⁵⁰Ibid., p.5.
- ⁵¹The term 'PINs' was first used by Sikkink in an early article. See K. Sikkink, 'Human Rights, Principled Issue-Networks, and Sovereignty in Latin America', *International Organization*, Vol.47, No.3 (1993), p.411; the second term was used by Risse and Sikkink. See T. Risse and K. Sikkink (note 47), p.5. The third term was used by Margaret Keck and K. Sikkink. See M.E. Keck and K. Sikkink, *Activists Beyond Borders* (Ithaca: Cornell University Press, 1998), p.1.
- ⁵²See K. Sikkink, *ibid.*, pp.417 and 439.
- ⁵³See M. Finnemore and K. Sikkink, 'International Norm Dynamics and Political Change', *International Organization*, Vol.52 (1998), pp.887 – 910.
- ⁵⁴See T. Risse and K. Sikkink (note 47) pp.5 and 11 – 17.
- ⁵⁵See M.E. Keck and K. Sikkink (note 51) pp.4 – 5.
- ⁵⁶Ibid., p.2.
- ⁵⁷Ibid., p.16.
- ⁵⁸See K. Sikkink (note 51) p.437.
- ⁵⁹See M. Mutua, 'Book Review', *American Journal of International Law*, Vol.95 (2001), p.255; and P. Burns and O.C. Okafor, 'The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment or How it is still Better to Light a Candle than to Curse the Darkness', *Otago Law Review*, Vol.9 (1998), pp.399 – 410.
- ⁶⁰For more or less general discussions of, or brief reflections on, the nature of the functional sections of the African system, see M. Evans and R. Murray, *The African Charter on Human and Peoples' Rights* (Cambridge: Cambridge University Press, 2002); B.O. Okere, 'The Protection of Human Rights in Africa and the African Charter on Human and Peoples' Rights: A Comparative Analysis with the European and American Systems', *Human Rights Quarterly*, Vol.6 (1984), p.141; C.A. Odinkalu, 'The Individual Complaints Procedure of the African Commission on Human and Peoples' Rights: A Preliminary Assessment', *Transnational Law and Contemporary Problems*, Vol.8 (1998), p.359 (hereinafter referred to as 'Preliminary Assessment'); R. Chongwe, 'African Charter on Human and Peoples' Rights', *Commonwealth Law Bulletin*, Vol.13 (1997), p.1605; P. Takirambudde, 'Six Years of the African Charter on Human and Peoples' Rights: An Assessment', *Lesotho Law Journal*, Vol.7, p.35; S. Neff, 'Human Rights in Africa: Thoughts on the African Charter on Human and Peoples' Rights in the Light of Case Law from Botswana, Lesotho and Swaziland', *International and Comparative Law Quarterly*, Vol.33 (1984), p.331; K.A. Acheampong, 'The African Charter and the Equalization of Human Rights', *Lesotho Law Journal*, Vol.7, p.21; C.M. Peter, 'The Proposed African Court of Justice – Jurisprudential, Procedural, and Enforcement Problems and Beyond', *East African Journal of Peace and Human Rights*, Vol.1 (1993), p.117; O. Ojo and A. Sesay, 'The OAU and Human Rights: Prospects for the 1980s and Beyond', *Human Rights Quarterly*, Vol.8 (1986), p.89; and B.G. Ramcharan, 'The Travaux Préparatoires of the African Commission on Human and Peoples' Rights', *Human Rights Law Journal*, Vol.13 (1992), p.307. For an excellent, if critical, discussion of the nature and potential of the newly established, but as yet non-functional, court, see M. Mutua, 'The African Human Rights Court: A Two-Legged Stool?', *Human Rights Quarterly*, Vol.21 (1999), p.342.
- ⁶¹See H.J. Steiner and P. Alston, *International Human Rights in Context: Law, Politics, Morals* (New York: Oxford University Press, 2000), p.920.
- ⁶²See C.A. Odinkalu, 'Preliminary Assessment' (note 60), p.402.
- ⁶³For instance, see C.E. Welch, Jr., 'The African Commission on Human and Peoples Rights: A Five Year Report and Assessment', *Human Rights Quarterly*, Vol.14 (1992), p.43; R. Gittleman, 'The African Charter on Human and Peoples' Rights: A Legal Analysis', *Virginia Journal of International Law*, Vol.22 (1981 – 82), pp.667 – 94; and See N.J. Udombana, 'Toward the African Court on Human and Peoples' Rights: Better Late Than Never', *Yale Human Rights and Development Law Journal*, Vol.3 (2000), p.45.
- ⁶⁴Ibid.
- ⁶⁵For a general discussion of 'afro-pessimism', see T.M. Shaw and C.A. Adibe, 'Africa and Global Developments

in the Twenty-First Century', *International Journal*, Vol.51 (1995), p.1; For a discussion of a form of 'afro-pessimism' in academic discussions relating to the African Charter on Human and Peoples' Rights, see C.A. Odinkalu, 'Analysis of Paralysis or Paralysis by Analysis? Implementing Economic, Social, and Cultural Rights Under the African Charter on Human and Peoples Rights', *Human Rights Quarterly*, Vol.23 (2001), p.327.

⁶⁶The otherwise commendable writings of scholars like Dlamini and Mtugwanya are perhaps the most illustrative of this very common implied or explicit attitude to the system. See C.R.M. Dlamini, 'Toward a Regional Protection of Human Rights in Africa: The African Charter on Human and Peoples' Rights', *The Comparative and International Law Journal of Southern Africa*, Vol.24 (1991), p.189; and G. Mtugwanya, 'Realizing Universal Human Rights Norms through Regional Human Rights Mechanisms: Reinvigorating the African System', *Indiana International and Comparative Law Review*, Vol.10 (1999), pp.35 - 42.

⁶⁷R. Murray, 'Decisions by the African Commission on Individual Communications under the African Charter on Human and Peoples' Rights', *International and Comparative Law Quarterly*, Vol.46 (1997), p.412. See also, R. Murray, *The African Commission on Human And People's [sic] Rights and International Law* (Oxford: Hart, 2000).

⁶⁸Helfer and Slaughter have demonstrated this in relation to the European Courts, while Baxi and Gadbois have separately demonstrated this in relation to the Indian Supreme Court. See L. Helfer and A. Slaughter (note 41); and G.H. Gadbois, 'The Supreme Court of India as a Political Institution' in R. Dhavan, R. Sudarshan, and S. Khurshid (eds.), *Judges and Judicial Power in India* (Bombay: Tripathi, 1985), pp.258 - 9.

⁶⁹See G.J. Naldi and K. Magliveras, 'The Proposed African Court of Human and Peoples' Rights: Evaluation and Comparison', *African Journal of International and Comparative Law*, Vol.8 (1996), p.944; and C.R. Dlamini (note 66).

⁷⁰*Ibid.*

⁷¹See C.A. Odinkalu, 'Preliminary Assessment' (note 60).

⁷²See C.E. Welch Jr., 'The African Commission on Human and Peoples Rights: A Five Year Report and Assessment', *Human Rights Quarterly*, Vol.14 (1992), pp.43 - 56.

⁷³See K. Sikkink, 'Human Rights, Principled Issue-Networks, and Sovereignty in Latin America', *International Organization*, Vol.47 (1993), pp.411 - 39.

⁷⁴A much fuller account of the relevant evidence appears in chapter four of my forthcoming book on the African System. See O.C. Okafor, *The Domestic Promise of the African System* (forthcoming).

⁷⁵For the case at the African Commission, see *The Registered Trustees of the Constitutional Rights Project (in respect of Zamani Lekwot and 6 Others) v Nigeria* (Merits), Communication No.87/93, reproduced in *International Human Rights Reports*, Vol.3 (1996), p.137. For the same case before the Nigeria courts, see *Constitutional Rights Project v Project v President Ibrahim Babangida and 2 Others*, Suit No.M/102/93-Lagos State High Court, per Justice Onalaja (unreported).

⁷⁶This was the Zangon-Kataf Civil Disturbances Special Tribunal.

⁷⁷Hereinafter referred to as 'the Charter'.

⁷⁸For the African Commission version of this case, see Communications No.105/93 (*Media Rights Agenda v Nigeria*), 130/94 (*Constitutional Rights Agenda v Nigeria*), and 152/96 (*Media Rights Agenda and Constitutional Rights Agenda v Nigeria*). For the same matter before the Nigerian Courts, see interview with KM (not real name), legal officer at Media Rights Agenda, held on the 24 May 2000 (transcripts on file with this writer) and *Richard Akinola v General Ibrahim Babangida and 3 Others*, Suit No.M/462/93. For a second similar case before the Nigerian courts, see *Incorporated Trustees of Media Rights Agenda and Another v Hon. Attorney-General of the Federation*, Suit No.FHC/L/CS/908/99.

⁷⁹See *Incorporated Trustees of Media Rights Agenda and Another V Honourable Attorney-General of the Federation*, Suit No.FHC/L/CS/908/99, Federal High Court, Lagos. Additionally, a set of bills have been introduced in the National Assembly with the active participation of the MRA seeking legislation to repeal this and other offensive press laws.

⁸⁰This is evident from an in-depth analysis of the evidence adduced in this section of the article.

⁸¹See *Final Communiqué* (on file with this writer).

⁸²The more recent events concerning the Zimbabwe question help demonstrate this point. In recognition of the greater potency of inter-African criticisms, in the context of Africa's historical and social context, the Commonwealth Committee that assessed the fairness of the 2002 Zimbabwean elections was composed of two African and one other state.

⁸³See D. Shelton, *Remedies in International Human Rights Law* (New York: Oxford University Press, 1999), p.177.

⁸⁴See Interview with LY (not real name), held at Lagos, Nigeria, 24 May 2000.

⁸⁵See Cap.53, Laws of the Federation of Nigeria, 1990.

⁸⁶*Ibid.*, section 2. Emphasis supplied.

⁸⁷*Ibid.*, section 7.

⁸⁸*Ibid.*, section 8.

⁸⁹See *Constitutional Rights Project (in respect of Zamani Lekwot and 6 others) vs. Nigeria*, Communication No.87/93, reproduced in Institute for Human Rights and Development, *Compilation of Decisions on*

Communications of the African Commission on Human and Peoples' Rights (Banjul: The Gambia, 1999) at 38 – 41.

⁹⁰For instance, see *ibid.*

⁹¹See *Final Communiqué of the Second Extraordinary Session of the African Commission on Human and Peoples' Rights*, held in Kampala, Uganda, 18 – 20 December 1995 (on file with the author) at paragraph 16.

⁹²For instance, see the United Nations General Assembly's *Resolution on the Situation of Human Rights in Nigeria*, A/RES/50/199 of 22 December 1995.

⁹³See R. Murray, 'Decisions of the African Commission on Individual Communications under the African Charter on Human and Peoples' Rights', *International and Comparative Law Quarterly*, Vol.46 (1997), pp.412 – 28.

⁹⁴See Cap 414, Laws of the Federation, 1990.

⁹⁵*Ibid.*, long title of the Act. Emphasis supplied.

⁹⁶See *Constitutional Rights Project and the Civil Liberties Organization (on Behalf of Ken Saro-Wiwa) vs. Nigeria*, Consolidated Communications No.137/94, 154/96, and 161/97, reproduced in Institute for Human Rights and Development, *Compilation of Decisions on Communications of the African Commission on Human and Peoples' Rights* (Banjul: The Gambia, 1999) at 150 – 68.

⁹⁷Section 4 thereof.

⁹⁸See the *Zamani Lekwot Communication* (note 79).

⁹⁹See *Nigerian Democracy: The Journey So Far* (Abuja: Federal Ministry of Information and Culture, 1998), p.188.

¹⁰⁰For instance, see *Ugochukwu Agballah v National Constitutional Conference Commission and others*, Suit No.FHC/E/8/94, Federal High Court Enugu (unreported); and *Incorporated Trustees of Media Rights Agenda v Attorney General of the Federation*, Suit No.FHC/L/CS/908/99, Federal High Court, Lagos (unreported).

¹⁰¹See *Fawhinmi v Aminu* (1993) FHCLR 259.

¹⁰²See *Ejiofor v Okeke and others*, Suit No.FHC/AN/M9/96, Court of Appeal, Enugu Division (unreported). See also *Wale Adedayo and another v IGP*; the *Official Secrets Act case*; and the *Application of VAT to Newspapers case* (acronym) – See interview with KM (not real name), (note 78).

¹⁰³See *Manual on Gender Specific Rights Litigation and Protection Strategies* (Lagos: Shelter Rights Initiative, 1998), pp.48 – 50.

¹⁰⁴See O. Eze, *Study on the Right to Education in Nigeria* (Lagos: Shelter Rights Initiative, 1998), p.37.

¹⁰⁵*Ibid.* See also *LASER Contact*, January – March 1998; and *SERAC@WORK*, April – August 1998 pp.6 – 7.

¹⁰⁶For instance see 1997–1998 *Annual Report of the Human Rights Law Service (HURILAWS)* at 23. See also 1999 *Annual Report of the Human Rights Law Service (HURILAWS)* at 16; the *HURILAWS Newsletter*, April – June 1998 at 35; *Constitutional Rights journal*, October – December 1998 at 36 – 37.

¹⁰⁷See K.S.A. Ebeku, 'Press Freedom and Democracy in Nigeria', *Review of the African Commission on Human and Peoples' Rights*, Vol.9 (2000), p.44. These assaults on the press were strongly denounced by the African Commission in a number of decisions. For instance, see *Constitutional Rights Project and Civil Liberties Organization v Nigeria*, Communication No.102/93, *International Human Rights Reports*, Vol.7 (2000), p.259.

¹⁰⁸This is evidenced by the fact that all of these activist media publications continued to publish throughout the 15 years of military rule, even though some had to go underground for short spells. Moreover all of these publications survive to this day.

¹⁰⁹*Ibid.*

¹¹⁰*Ibid.*, p.264.

¹¹¹See *Vanguard*, 2 May 2001, accessed at www.vanguardngr.com/30042001/n3020501.htm. See also *Media Rights Monitor* February 2000.

¹¹²C.A. Civil Appeal No.4/91 (unreported).

¹¹³See J. Oloka-Onyango, 'Human Rights and Sustainable Development in Contemporary Africa: A New Dawn, or Retreating Horizons?', *Buffalo Human Rights Law Review*, Vol.6 (2000) pp.3, 63 – 4.

¹¹⁴See F. Viljoen, 'Application of the African Charter on Human and Peoples' Rights by Domestic Courts in Africa', *Journal of African Law* Vol.43 (1999), pp.1, 3 – 4. ¹¹⁵Communication

No.97/93 (1999) 6 *International Human Rights Reports* 828. ¹¹⁶See F. Viljoen, 'Application' (note 114), p.2.

¹¹⁷*Ibid.*

¹¹⁸*Ibid.*, p.3.

¹¹⁹*Ibid.*

¹²⁰*Ibid.*

¹²¹*Ibid.*, p.5.

¹²²*Ibid.*, pp.5 – 6.

¹²³In this section, the theoretical models discussed in the first section will be applied in a much more detailed way to the hard evidence outlined in the third section above. A small amount of repetition is called for in the interest of clarity of analysis.

- ¹²⁴The work of Makau Mutua, Joe Oloka-Onyango, Chidi Odinkalu and Frans Viljoen's are to varying extents notable exceptions to this general trend. These perceptive scholars have hinted at the occurrence and value of the 'correspondence' that occurs outside the compliance-centred optic. See M. Mutua, 'Two-Legged Stool' (note 60); J. Oloka-Onyango, 'Human Rights Activism in Africa: A Frog's Eye View', *Codesria Bulletin*, Issue 1 (1997), pp.3 – 6; C.A. Odinkalu, 'Preliminary Assessment' (note 60); and F. Viljoen, (note 114).
- ¹²⁵See C.A. Odinkalu (note 60).
- ¹²⁶The meaning of 'constructivism' (and of its quasi-constructivist variant) has been explained in detail in the first section of this article.
- ¹²⁷This concept has been already articulated in the first section of this article.
- ¹²⁸See A. Moravcsik (note 27).
- ¹²⁹See K. Sikkink, 'Human Rights, Principled Issue-Networks, and Sovereignty in Latin America', *International Organization*, Vol.47 (1993), pp.3 – 411.
- ¹³⁰For a discussion of the comparative leadership of local Nigerian NGOs in this connection, see F. Viljoen, 'Application of the African Charter on Human and Peoples' Rights by Domestic Courts in Africa', *Journal of African Law*, Vol.43 (1999), pp.1, 7 – 11.
- ¹³¹For instance, see M.E. Keck and K. Sikkink, *Activists Beyond Borders* (Ithaca: Cornell University Press, 1998), p.16.
- ¹³²Civil Disturbances Decree 2 of 1987.
- ¹³³*Ibid.*
- ¹³⁴Federal Military Government (Supremacy and Enforcement of Powers) Decree 28 of 1970.
- ¹³⁵See M. Mutua, 'Why Re-Draw the Map of Africa: A Moral and Legal Inquiry', *Michigan Journal of International Law*, Vol.16 (1996), p.591.
- ¹³⁶*Ibid.*
- ¹³⁷See G. Alfredsson and D. Turk, 'International Mechanisms for the Monitoring and Protection of Minority Rights: Their Advantages, Disadvantages and Interrelationships' in A. Bloed, L. Leicht, M. Nowak and A. Rosas (eds.), *Minority Rights in Europe: Comparing International Procedures and Mechanisms* (Dordrecht: Martinus Nijhoff, 1993), p.181.
- ¹³⁸See A.P. Mutharika, 'The Role of the United Nations Security Council in African Peace Management: Some Proposals', *Michigan Journal of International Law*, Vol.17 (1996), pp.537, 540 – 41.
- ¹³⁹Nigeria, Sudan and Zaire are just three of the numerous examples that illustrate this point.
- ¹⁴⁰See T.M. Shaw and C. Adibe p.19 (note 65); and O.C. Okafor, *Re-Defining Legitimate Statehood: International Law and State Fragmentation in Africa* (The Hague: Martinus Nijhoff, 2000), p.34.
- ¹⁴¹*Ibid.*
- ¹⁴²See J. Herbst, 'The Creation and Maintenance of National Boundaries in Africa', *International Organization*, Vol.43 (1989), p.673.
- ¹⁴³See O.C. Okafor, pp.20 – 38 (note 140).
- ¹⁴⁴See C. Young, *The African Colonial State in Comparative Perspective* (New Haven: Yale University Press, 1994).
- ¹⁴⁵See T.M. Shaw and C. Adibe (note 65).
- ¹⁴⁶See M. Mutua (note 135); and O.C. Okafor (note 140).
- ¹⁴⁷See F. Deng, 'State Collapse: The Humanitarian Challenge to the United Nations in I.W. Zartman (ed.), *Collapsed States: The Disintegration and Restoration of Legitimate Authority* (Boulder: Lynne Rienner, 1995), p.211.
- ¹⁴⁸This is the logic that has guided recent inter-African efforts at conflict-resolution under the auspices of the OAU Mechanism for Conflict Prevention, Management, and Resolution. For more on this mechanism, see C.J. Bakwesegha, 'The Role of the Organization of African Unity in Conflict Prevention, Management, and Resolution', *International Journal of Refugee Law*, Vol.7 (1995), p.207; and P.M. Munya, 'The Organization of African Unity and its Role in Regional Conflict Resolution and Dispute Settlement: A Critical Evaluation', *Boston College Third World Law Journal*, (1999), pp.537, 552 – 3.
- ¹⁴⁹See O.C. Okafor, 'Entitlement, Process, and Legitimacy in the Emerging International Law of Secession', *International Journal on Minority and Group Rights*, Vol.9 (2002), p.41.
- ¹⁵⁰See J. Widner (note 10).
- ¹⁵¹For an account of the self-determination struggles of the Kataf sub-state group, see O.C. Okwu-Okafor, 'Self-Determination and the Struggle for Ethno-Cultural Autonomy in Nigeria: The Zangon-Kataf and Ogoni Problems', *African Society of International and Comparative Law Proceedings*, (1994), pp.88, 102 – 113.
- ¹⁵²*Ibid.*
- ¹⁵³See *Katangese Peoples Congress v Zaire*, Communication No.75/92, *International Human Rights Reports*, Vol.3 (1996), p.136.